EMPLOYEES' STATE INSURANCE CORPORATION
PANCHDEEP BHAWAN: C.I.G. ROAD: NEW DELHI
ISO 9001:2000 (QMS) OFFICE

No.G-1/Purchase Procedure/MSU/2009-10 Dated: 6.11.09

To,

All Regional Directors /
Medical Superintendents, ESI Hospitals /
All the Branch Officers of Hqrs., Office /
JD (In charges) SROs/ DD (F) / JD (F) /
Director (F), Hqrs. Office /
DMC-I, II, Hqrs. Office /
All Directors of Hqrs. Office.

Sub: Manual on Purchase Procedure and Execution of Contracts.

Sir,

A Manual on the above subject has been compiled by the MSU Division on the basis of guidelines issued by C.V.C., ESI Hqrs. Office, Ministry of Finance and relevant provisions contained in the GFR. A copy of the proposed Manual is enclosed herewith. You are requested to go through the manual and submit your views / suggestion for improvement, if any, within a period of 15 days to the undersigned. Please note, in case your comments are not received by 23rd November, 2009 it will be treated that you have agreed with this manual.

Yours faithfully,

(S. P. SINGH)
Director (MSU)

Copy to Director (System) with the request to upload the above manual on the website of ESIC Hqrs. Office.

Director (MSU)

EMPLOYEES' STATE INSURANCE CORPORATION

PANCHDEEP BHAWAN: C.I.G. ROAD: NEW DELHI

ISO 9001:2000 (QMS) OFFICE

MANUAL

ON

PURCHASE PROCEDURE
AND
EXECUTION OF CONTRACTS

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PREFACE

The ESI Corporation is having a vast infrastructure on medical side as well as non-medical side having ESI Hospitals as well as Regional Offices in all the States, recently, Corporation has taken a decision to open the Medical Colleges for which a lot of equipments on medical side as well non-medical side are to be procured it imperative on our part to provide complete guidance to the field offices for making purchases in a competitive manner, maintain transparency and fairness while making the purchases as well as entering into the contracts. The purchase procedure being followed by the Medical Division is not exhaustive, therefore, the need for having our own manual on policies and procedures for purchases of goods has been considered.

The first edition of the manual on policies and procedure for purchases of goods in the ESI Corporation has been compiled by taking into account the orders / instructions issued by the Ministry of Finance, orders contained in the GFR, orders issued by the ESI Corporation and instructions issued by the CVC. This manual may be taken as guidance and should not be quoted as an authority. In case, if there is any controversy, in any Para of this manual in relation to the orders issued by the Govt. of India, unless and until it is relaxed by the Director General, ESI Corporation, the orders of the Govt. will be final and binding.

It is hoped that this manual will found to be useful by the offices of the Corporation. The Departmental instructions to supplement the existing procedure will be issued as and when necessarily arises.

Any suggestion to improve the content of the manual will be solicited.

Director General
ESI Corporation

New Delhi
Dated

CHAPTER – 1

1.1. Introduction

ESI Corporation spends a sizeable amount of its budget for purchasing various types of goods to discharge the duties and responsibilities assigned to it. It is imperative that these purchases are made following a uniform, systematic, efficient and cost effective procedure, in accordance with the relevant rules and regulations of the Government. The Regional Directors/Medical Superintendents of E.S.I. Hospitals / SSMC / Director (Medical) ESI Schemes and other officers of the Corporation have been delegated powers to make their own arrangement for procurement of goods under the Delegation of Power, which have to be exercised in conformity with the orders and guidelines issued by competent authorities coverings financial, vigilance, security, safety, counter trade and other regulatory aspects. Without purporting to be a comprehensive compendium of all statutory provisions, rules, regulations, orders and guidelines on the subject of public procurement, this Manual is intended to serve as a portal to enter this vast area and draw attention to basic norms and practices governing public procurement.

1.1.2. General principles relating to expenditure

Every officer incurring or authorizing expenditure from public moneys should be guided by high standards of financial propriety. Every officer should also enforce financial order and strict economy and see that relevant financial rules and regulations are observed, by his own office and by subordinate disbursing officers. Among the principles on which emphasis is generally laid are the following: -

(i) Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.

(ii) The expenditure should not be prima facie more than the occasion demands.

(iii) No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.

(iv) Expenditure from public moneys should not be incurred for the benefit of a particular person or in a section of the people, unless –

  (a) a claim for the amount could be enforced in a Court of Law,
  or

  (b) The expenditure is in pursuance of a recognized policy or custom.

(v) The amount of allowances granted to meet expenditure of a particular type should be so regulated that the allowances are not on the whole a source of profit to the recipients.

1.1.3. Transparency, Competition, Fairness and Elimination of Arbitrariness in the Procurement Process

It is essential for every officer of the Corporation while making purchases / entering into contract of services etc., to keep in mind the following five words:

a) Transparency,
b) Fairness,
c) Value for money,
d) Quality,
e) Time.

The Regional Directors/Medical Superintendents/Director (Medical) ESI Services should ensure to make the purchases / execute the contracts for services in a transparent manner to bring competition, fairness and elimination of arbitrariness in the system. This will enable the prospective tenderers to formulate competitive tenders with confidence. The following are some important measures to achieve the same and, thus, secure best value for money.

i) The text of the tender document should be user-friendly, self-contained, comprehensive, unambiguous, and relevant to the objective of the purchase. The use of terminology used in common parlance in the industry should be preferred.

ii) The specifications of the required goods should be framed giving sufficient details in such a manner that it is neither too elaborately restrictive as to deter potential tenderers or increase the cost of purchase nor too sketchy to leave scope for sub-standard supply. The specifications must meet the essential requirements of the user department. Efforts should also be made to use standard specifications, which are widely known to the industry.

iii) The tender document should clearly mention the eligibility criteria to be met by the tenderers such as minimum level of experience, past performance, technical capability, manufacturing facilities, financial position, ownership or any legal restriction etc.

iv) Restrictions on who is qualified to tender should conform to extant Government policies and be judiciously chosen so as not to stifle competition amongst potential tenderers.

v) The procedure for preparing and submitting the tenders; deadline for submission of tenders; date, time & place of public opening of tenders; requirement of earnest money and performance security; parameters for determining responsiveness of tenders; evaluating and ranking of tenders and criteria for full or partial acceptance of tender and conclusion of contract should be incorporated in the tender enquiry in clear terms.

vi) Tenders should be evaluated in terms of the criteria already incorporated in the tender document, based on which tenders have been received. Any new condition, which was not incorporated in

the tender document, should not be brought into consideration while evaluating the tenders.

vii) Sufficient time should be allowed to the tenderers to prepare and submit their tenders.

viii) Suitable provisions should be kept in the tender document allowing the tenderers reasonable opportunity to question the tender conditions, tendering process, and/or rejection of its tender and the settlement of disputes, if any, emanating from the resultant contract.

ix) It should be made clear in the tender document that tenderers are not permitted to alter or modify their tenders after expiry of the deadline for receipt of tender till the date of validity of tenders and if they do so, their earnest money will be forfeited.

x) Negotiations with the tenderers must be severely discouraged. However, in exceptional circumstances, where price negotiations are considered unavoidable, the same may be resorted to, but only with the lowest evaluated responsive tenderer, and that too with the approval of the competent authority, after duly recording the reasons for such action.

xi) The name of the successful tenderer to whom the supply contract is awarded should be appropriately notified by the purchase organization for the information of general public, including display at notice board, periodical bulletins, website etc.

1.1.3. Efficiency, Economy and Accountability:

Public procurement procedures must conform to exemplary norms of best practices to ensure efficiency, economy and accountability in the system. To achieve this objective, the following key areas should be taken care of:

(i) To reduce delays, every controlling officer should prescribe appropriate time frame for each stage of procurement; delineate the responsibility of different officials and agencies involved in the purchase process and delegate, wherever necessary, appropriate purchase powers to the lower functionaries with due approval of the competent authority.

(ii) Every controlling officer should ensure conclusion of contract within the original validity of the tenders. Extension of tender validity must be discouraged and resorted to only in absolutely unavoidable, exceptional circumstances with the approval of the competent authority after duly recording the reasons for such extension.

(iii) The Central Purchase Officer (Hqrs. Office), Medical or non-Medical, should bring into the rate contract system more and more common user items, which are frequently needed in bulk by various State Govts, ESI Hospitals and Regional Offices where applicable. The Central Purchase

Officer should also ensure that the rate contracts remain available without any break.

1.2 Guidelines for Public Procurement

The Indian Contract Act, 1872 and the Sale of Goods Act, 1930 are major legislations governing contracts of sale/ purchase of goods in general. There is no law exclusively governing public procurement of goods. However, comprehensive rules and directives in this regard are available in the General Financial Rules (GFR), 2005, especially chapter 6; Delegation of Financial Powers Rules (DFPR); Government orders regarding price or purchase preference or other facilities to sellers in the Handloom Sector, Cottage and Small Scale Industries and to Central Public Sector Undertakings etc. and the guidelines issued by the Central Vigilance Commission to increase transparency and objectivity in public procurement. These provide the regulatory framework for the public procurement system.

1.3 Present Manual

To achieve what has been stated in the above paragraphs, it is essential that the purchase officials be provided with all the required rules, regulations, instructions, directives, and guidance on best practices in the form of a Manual. This Manual is intended to serve this objective. This manual contains guidelines and directives concerning purchase of goods with public funds as well as some allied areas such as installation of equipment, operators' training, after sales services, maintenance contract, etc. Relevant aspects of purchase management techniques have been incorporated in proper sequence under separate chapters. The text incorporated in each chapter has been highlighted with appropriate sub-heads. This arrangement will help the users to readily locate the desired subjects/sub-subjects.

1.4 Definition of Goods

The term 'goods' used in this Manual applies generally to all articles, material, commodities, livestock, furniture, fixtures, raw material, spares, instruments, machinery, equipment, industrial plant etc. purchased or otherwise acquired for the use of Corporation but excluding books, publications, periodicals, etc. for a library.

1.5 Standard Tender Enquiry Documents

Every officer should use standard forms of tender enquiry documents and contracts in line with the extant rules, regulations, directives, procedures etc. A set of standard documents may be kept updated for this purpose by each office, broadly following the standard documents prescribed by higher authorities and customizing these standard templates to suit specific requirements. Supervisory authorities would prescribe the kind of alterations permitted in the standard

templates and the cases where deviations from the standard provisions can be made with appropriate legal and financial advice.

CHAPTER – 2

OBJECTIVES AND POLICIES OF PURCHASE

2.1 Fundamental Principles of Public Buying

It may be useful to refer to the following provisions in the General Financial Rules, 2005:

Rule 137. Fundamental principles of public buying: Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy and transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement. The procedure to be followed in making public procurement must conform to the following yardsticks:-

(i) The specifications in terms of quality, type etc., as also quantity of goods to be procured, should be clearly spelt out keeping in view the specific needs of the procuring organizations. The specifications so worked out should meet the basic needs of the organization without including superfluous and non-essential features, which may result in unwarranted expenditure. Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs;

(ii) offers should be invited following a fair, transparent and reasonable procedure;

(iii) the procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects;

(iv) the procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required;

(v) At each stage of procurement the concerned procuring authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.

2.2 Authorities competent to purchase goods and their Purchase Powers

2.2.1 An authority which is competent to incur contingent expenditure as per Delegation of Power may sanction the purchase of goods required for use in his office by following the general procedure contained in this Manual and it should be strictly ensured that a demand should not be split into small quantities for the

sole purpose of avoiding the necessity of taking approval of the higher authority required for sanctioning the purchase of the original demand.

2.3 Preferential/Mandatory Purchase from certain sources Product Reservation

i) **Khadi Goods/Handloom Textiles**: The Central Government has reserved all items of hand-spun and hand-woven textiles (Khadi goods) for exclusive purchase from Khadi & Village Industries Commission (KVIC). Government has also reserved all items of handloom textiles including Barrack Blankets for exclusive purchase from KVIC or notified handloom units through the Association of Corporations and Apex Societies of Handlooms (ACASH) and Women's Development Organization (WDO). The handloom textile items are to be purchased from KVIC to the extent they can supply and the balance from the handloom units of ACASH; to the extent these units can make supplies. Left over quantity, if any, may be purchased from other sources. In the case of KVIC, the rates are fixed by certification committee, and the rates so fixed are reviewed by the Cost Accounts Branch of the Ministry of Finance. In the case of ACASH, the final price will be calculated by ACASH and fixed by the Ministry of Textiles by associating a representative of the Chief Accounts Office of Department of Expenditure, Ministry of Finance. The Central Purchase Organization (e.g. DGS&D) also enters into long term contracts with KVIC and ACASH for items of recurrent demands and lays down terms and conditions therein. For other items, the purchase from both KVIC and ACASH should be made on single tender basis. Normal inspection and other procedures shall apply for procurement through KVIC/ ACASH. Testing arrangements will be provided by KVIC/ ACASH or by their notified units and where the same are not available; testing charges for testing outside at approved laboratory should be borne by KVIC/ ACASH/ their units. All relevant details in this regard are available with DGS&D.

ii) **Reserved Products of SSI**: The Government has also reserved some items for exclusive purchase from Small Scale Sector. The every officer of the Corporation should make efforts to purchase such products from these notified agencies/suppliers only, if it is not possible the reason should be recorded on file while making the purchases from the open market. The tender enquiry document should clearly indicate that the purchase will be made from the suppliers falling in the category of KVIC, ACASH, and Small Scale Units registered with National Small Industries Corporation (NSIC). In the process of procurement, other things being equal, the purchase preference would be in favour of KVIC/ACASH/SSI in that order. (Note: KVIC and ACASH are treated on par with SSI units registered with NSIC and DGS&D.)

Special dispensation available to Kendriya Bhandar (KB) and National Consumer Cooperative Federation (NCCF) for procurement of stationery and

consumables before the introduction of GFRs 2005, which has since been terminated, is under review. While making purchase of goods falling in these categories, the purchase organization should check the latest directives in this regard for necessary action.

2.4 Price Preference

The price preference admissible to the SSI unit is not mandatory. It is to be decided separately for each tender on merits of each case, in consultation with Finance, and a mention to that effect should be made in the Notice Inviting Tenders (NIT)/Request for Proposal (RFP). The price preference is accorded to the deserving SSI units as an incentive to grow; but it should not promote inflation, profiteering or misuse of SSI units as conduits. In case the SSI unit in view has established itself as a supplier of the required goods on competitive terms and enjoys advantage(s) over Large Scale Sector, no price preference need be considered.

Where the NSIC / State Development Corporations themselves quote on behalf of some SSI units, such offers will be considered as offers from SSI units registered with the DGS&D/NSIC.

An SSI Unit will not get any price preference over another SSI Unit.

Price preference facility to SSI Units will, however, not apply to the procurement of the under mentioned goods: -

i) Drug items
ii) Medical and Electro-medical equipment
iii) Items where technical competence, capacity and manufacturing facilities are required to be verified before placement of order.

Before considering any price preference to Small Scale Sector, the Purchase officer should check the latest directives in this regard for necessary action.

2.5 Purchase Preference to Central Public Sector Undertakings:

Preferential purchase policy for certain medicines: Government has approved (vide Department of Chemicals & Petrochemicals OM No. 50013/1/2006-SO(PI-IV) dated 7th August, 2006) grant purchase preference exclusively to Pharma CPSEs and their subsidiaries in respect of 102 specified medicines manufactured by them. The salient features of this Purchase Preference Policy (PPP) are as under:

i) PPP in respect of a maximum of 102 medicines would be applicable to purchases made by Ministries / Departments, PSUs, Autonomous
ii) Bodies, etc. of the Central Government It would be valid for a period of five years. This would also be applicable to purchase of 102 drugs made by State Governments under health programmes which are funded by

Government of India. (e.g. purchases under National Rural Health Mission etc).

iii) PPP will extend only to Pharma CPSEs and their subsidiaries (i.e. where Pharma CPSEs own 51 % or above shareholding).

iv) It would be applicable to a maximum of 102 medicines, The list of 102 medicines would be reviewed and revised by Department of Chemicals & Petrochemicals as and when required taking care not to include any item reserved for SSI units.

v) The Purchasing Departments may invite limited tenders from Pharma CPSEs and their subsidiaries or purchase directly from them at NPPA certified / notified price with a discount upto 35%.

vi) The purchasing departments would purchase from Pharma CPSEs and their subsidiaries subject to their meeting Good Manufacturing Practices (GMP) norms as per Schedule 'M' of the Drugs & Cosmetic Rules. If no Pharma CPSE is forthcoming to supply these 102 medicines, the purchasing departments would be at liberty to purchase from other manufacturers.

vii) If the Pharma CPSEs or their subsidiaries which have the benefit of PPP, fail to perform as per the purchase order, they would be subject to payment of liquidated damages or any other penalty included in the contract.

viii) The medicines covered under Drug & Price Control Order (DPCO) would be supplied at the rates fixed by National Pharmaceuticals Pricing Authority (NPPA) rates minus discount up to 35 per cent.

ix) In case of medicines not covered under DPCO, prices would be got certified from NPPA, only for the limited purpose of supply to Central Government Departments and their Public Sector Undertakings, autonomous bodies etc. On the certified price, Pharma CPSEs and their subsidiaries would provide discount up to 35%.

x) The Purchase Preference Policy (PPP) as contained in Department of Public Enterprises O.M. No. DPE.13(12)/2003-Fin.Vol.ll dated 18.7.2005 would not be applicable to Pharma CPSEs.

Before considering any such purchase preference, the purchase organization should check the latest directives in this regard for necessary action. Purchase Preference provision shall invariably be part of the Notice Inviting Tender (NIT).

2.7 Contract for Man-power supply

While entering into contract for man-power supply preference should be given to the Govt. recognized bodies / NGOs / Directorate General Resettlement, Ministry of Defence, Govt. of India. It may also be ensured that ESI Corporation will be the principle employer in those cases all the Labour law and contract regulation / abolition Act should be strictly complied. The instructions issued from

Hqrs. Office from time to time may also be kept in mind while inviting the tenders and finalization of the contract.

The ESI Corporation being an organization functioning under the Ministry of Labour, it is necessary to ensure observation of all Labour Laws and timely payment to all persons engaged through outsourcing agency for which following parameters may be ensured: -

1. Such security / outsourcing agencies are registered with Contract Labour (Regulations & Abolition) Act 1970 (as applicable) and coverage under ESI & PF Acts.
2. Minimum wage as fixed by State govt. for the category of workers deployed which may be continuously watche3d to bring to the notice of the contractor, besides implementing offices of State and Central Govt.
3. Payment on last working day of the month to the workers deployed: a certificate from service providers to the effect that they are covered and that all statutory Labour Laws are complied with, is to be attached by the contractors along with their monthly bills. The payments to the persons deployed may be made in the presence of a representative of Head of the Office.
4. ESI Corporation should provide basic amenities like change room, stationary, drinking water & torch light etc., for efficient performance of their duties.

CHAPTER – 3

GENERAL PRINCIPLES OF ENTERING INTO CONTRACTS

3.1 Introduction

The elements and principles of contract law and the meaning and import of various legal terms used in connection with the contracts are available in the Indian Contract Act, 1872 read with the Sale of Goods Act, 1930. Some of the salient principles relating to contracts are set out briefly in this chapter.

3.2 Elementary Legal Practices

3.2.1 What is a Contract? The proposal or offer when accepted is a promise, a promise and every set of promises forming the consideration for each other is an agreement, and an agreement if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object is a contract.

3.2.2 Proposal or Offer: When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal or offer. In a sale or purchase by tender, the tender signed by the tenderer is the proposal. The invitation to tender and instructions to tenderers do not constitute a proposal.

3.2.3 Acceptance of the Proposal: When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.

3.2.4 What agreements are contracts: An agreement is a contract enforceable by law when the following are satisfied. A defect affecting any of these renders a contract un-enforceable.

(a) Competency of the parties
(b) Freedom of consent of both parties
(c) Lawfulness of consideration
(d) Lawfulness of object

3.3 Competency of Parties

Under law any person who has attained majority and is of sound mind or not debarred by law to which he is subject, may enter into contracts. It, therefore, follows that minors and persons of unsound mind cannot enter into contracts nor can insolvent person do so.

3.3.1 Categories of persons and bodies who are parties to the contract may be broadly sub-divided under the following heads: -

(a) Individuals
(b) Partnerships
(c) Limited Companies
(d) Corporations other than limited companies

(a) Contracts with Individuals: Individuals tender either in their own name or in the name and style of their business. If the tender is signed by any person other than the concerned individual, the authority of the person signing the tender on behalf of another must be verified and a proper power of attorney authorizing such person should be insisted on. In case, a tender is submitted in a business name and if it is a concern of an individual, the constitution of the business and the capacity of the individual must appear on the face of the contract and the tender signed by the individual himself as proprietor or by his duly authorized attorney.
(b) Contracts with Partnerships: A partnership is an association of two or more individuals formed for the purpose of doing business jointly under
(c) A business name. It is also called a firm. It should be noted that a partnership is not a legal entity by itself, apart from the individuals constituting it. A partner is the implied authority to bind the firm in a contract coming in the purview of the usual business of the firm. The implied authority of a partner, however, does not extend to enter into arbitration agreement on behalf of the firm. While entering into a contract with partnership firm care should be taken to verify the existence of consent of all the partners to the arbitration agreement.
(d) Contracts with Limited Companies: Companies are associations of individuals registered under Companies Act in which the liability of the members comprising the association is limited to the extent of the shares held by them in such companies. The company, after its incorporation or registration, is an artificial legal person which has an existence quite distinct and separate from the members of shareholders comprising the same. A company is not empowered to enter into a contract for purposes not covered by its memorandum of association; any such agreement in excess of power entered into the company is void and cannot be enforced. Therefore, in cases of doubt, the company must be asked to produce its memorandum for verification or the position may be verified by an

inspection of the memorandum from the office of the Registrar of Companies before entering into a contract. Normally, any one of the Directors of the company is empowered to present the company. Where tenders are signed by persons other than Directors or authorized Managing Agents, it may be necessary to examine if the person signing the tender is authorized by the company to enter into contracts on its behalf.

(e) Corporation other than Limited Companies: Associations of individuals incorporated under statutes such as Trade Union Act, Cooperative Societies Act and Societies Registration Act are also artificial persons in the eye of law and are entitled to enter into such contracts as are authorized by their memorandum of association. If any contract has to be entered into with any one or such corporations or associations, the capacity of such associations to enter into contract should be verified and also the authority of the person coming forward to represent the said Association.

3.4 Consent of both Parties

Two or more persons are said to consent when they agree upon the same thing in the same sense. When two persons dealing with each other have their minds directed to different objects or attach different meanings to the language which they use, there is no agreement. The misunderstanding which is incompatible with agreement, may occur in the following cases: -

(a) When the misunderstanding relates to the identity of the other party to the agreement;
(b) When it relates to the nature or terms of the transactions;
(c) When it related to the subject matter of the agreement.

3.5 Free consent of both Parties

3.5.1 The consent is said to be free when it is not caused by coercion, undue influence, fraud, mis-representation or mistake. Consent is said to be so caused when it would not have been given but for the existence of coercion, undue influence, fraud, mis-representation or mistake. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was caused. A party to a contract, whose consent was caused by fraud or misrepresentation may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

3.5.2 In case consent to an agreement has been given under a mistake, the position is slightly different. When both the parties to an agreement are under a mistake as to a matter essential to the agreement, the agreement is not voidable but void. When the mistake is unilateral on the part of one party only, the agreement is not void.

3.5.3 Distinction has also to be drawn between a mistake of fact and a mistake of law. A contract is not void because it was caused by a mistake as to any law in force in India but a mistake as to law not in force in India has the same effect as a mistake of fact.

3.6 Consideration

Consideration is something which is advantageous to the promisor or which is onerous or disadvantageous to the promisee. Inadequacy of consideration is, however, not a ground avoiding the contract. But an act, forbearance or promise which is contemplation of law has no value is no consideration and likewise an act or a promise which is illegal or impossible has no value.

3.7 Lawfulness of object

The consideration or object of an agreement is lawful, unless it is forbidden by law or is of such a nature that if permitted, it would defeat the provisions of any law, or is fraudulent or involves or implies injury to the fraudulent property of another or the court regards it as immoral or opposed to public policy. In each of these cases the consideration or object of an agreement is said to be unlawful.

3.8 Communication of an Offer or Proposal

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. A time is generally provided in the tender forms for submission of the tender. Purchaser is not bound to consider a tender, which is received beyond that time.

3.9 Communication of Acceptance

A date is invariably fixed in tender forms upto which tenders are open for acceptance. A proposal or offer stands revoked by the lapse of time prescribed in such offer for its acceptance. If, therefore, in case it is not possible to decide a tender within the period of validity of the offer as originally made, the consent of the tenderer firm should be obtained to keep the offer open for further period or periods.

3.9.1 The communication of an acceptance is complete as against the proposer or offerer, where it is put in the course of transmission to him, so as to be out of the power of the acceptor, and it is complete as against the acceptor when it comes to the knowledge of the proposer or offerer. The medium of communication in government contracts is generally by post and the acceptance is, therefore, complete as soon as it is posted. So that there might be no possibility of a dispute regarding the date of communication of acceptance, it should be sent to the correct address by some authentic foolproof mode like registered post acknowledgement due, etc.

3.10 Acceptance to be identical with Proposal

If the terms of the tender or the tender, as revised, and modified, are not accepted or if the terms of the offer and the acceptance are not the same, the acceptance remains a mere counter offer and there is no concluded contract. It should, therefore, be ensured that the terms incorporated in the acceptance are not at variance with the offer or the tender and that none of the terms of the tender are left out. In case, uncertain terms are used by the tenderers, clarifications should be obtained before such tenders are considered for acceptance. If it is considered that a counter offer should be made, such counter offer should be carefully drafted, as a contract is to take effect on acceptance thereof. If the subject matter of the contract is impossible of fulfillment or is in itself in violation of law such contract is void.

3.11 Withdrawal of an Offer or Proposal

A tenderer firm, who is the proposer may withdraw its offer at any time before its acceptance, even though the firm might have offered to keep the offer open for a specified period. It is equally open to the tenderer to revise or modify his offer before its acceptance. Such withdrawal, revision or modification must reach the accepting authority before the date and time of opening of tender. No legal obligations arise out of such withdrawal or revision or modification of the offer as a simple offer is without a consideration. Where, however, a tenderer agrees to keep his offer open for a specified period for a consideration, such offers cannot be withdrawn before the expiry of the specified date. This would be so where earnest money is deposited by the tenderer in consideration of his being supplied the subsidiary contract and withdrawal of offer by the tenderer before the specified period would entitle the purchaser to forfeit the earnest money.

3.12 Withdrawal of Acceptance

An acceptance can be withdrawn before such acceptance comes to the knowledge of the tenderer. A telegraphic revocation of acceptance, which reaches the tenderer before the letter of acceptance, will be a valid revocation.

3.13 Changes in terms of a concluded Contract

No variation in the terms of a concluded contract can be made without the consent of the parties. While granting extensions or making any other variation, the consent of the contractor must be taken. While extensions are to be granted on an application of the contractor, the letter and spirit of the application should be kept in view in fixing a time for delivery.

3.14 Discharge of Contracts

A contract is discharged or the parties are normally freed from the obligation of a contract by due performance of the terms of the contract. A contract may also be discharged: -

(a) By mutual agreement: If neither party has performed the contract, no consideration is required for the release. If a party has performed a part of the contract and has undergone expenses in arranging to fulfill the contract it is necessary for the parties to agree to a reasonable value of the work done as consideration for the value.

(b) By breach: In case a party to a contract breaks some stipulation in the contract which goes to the root of transaction, or destroys the foundation of the contract or prevents substantial performance of the contract, it discharges the innocent party to proceed further with the performance and entitles him to a right of action for damages and to enforce the remedies for such breach as provided in the contract itself. A breach of contract may, however, be waived.

(c) By refusal of a party to perform: On a promisor's refusal to perform the contract or repudiation thereof even before the arrival of the time for performance, the premise may at his option treat the repudiation as an immediate breach putting an end to the contract for the future. In such a case the premise has a right of immediate action for damages.

(d) In a contract where there are reciprocal promises: If one party to the contract prevents the other party from performing the contract, the contract may be put to an end at the instance of the party so prevented and the contract is thereby discharged.

3.15 Stamping of Contracts

Under entry 5 of Schedule I of the Indian Stamp Act, an agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively is exempt from payment of stamp duty. (A NOTE OR MEMORANDUM sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal is not so exempt from stamp duty.) The Stamp Act provides that no Stamp Duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of the Government in cases where but for such exemption Government would be liable to pay the duty chargeable in respect of such instrument. (Cases in which Government would be liable are set out in Section 29 of the Act).

3.16 Authority for Execution of Contracts

The contracts and assurances of property made in the exercise of the executive power of the Corporation shall be executed on behalf of the Director General. The words "for and on behalf of the Director General" should therefore follow the designation appended below the signature of the officer authorized in this behalf.

Note 1: The various classes of contracts and assurances of property, which may be executed by the officer concerned in consultation of the legal advisor.
Note 2: The powers of various authorities, the conditions under which such powers should be exercised and the general procedure prescribed with regard to various classes of contracts and assurances of property are laid down in the Delegation of Powers.

3.17 Contract Effective Date

The date of commencement of the obligations under the contract on the parties to a contract is referred as the contract effective date. This date should be invariably indicated in each contract, as per agreed terms and conditions. The Regional Directors / Medical Superintendents or any purchasing officer may set the effective date to be a date after the following:

(i) Date of signing of the contract.
(ii) Furnishing of performance bond in terms of performance security.
(iii) Receipt of Bank Guarantee for advance payment.
(iv) Obtaining Export Licence for supply of stores by seller and confirmation by the buyer.
(v) Receipt of End User's Certificate. The supplier shall provide the End User's Certificate within 30 days of the signing of the contract.

3.18 Important Guidelines for entering into Contracts

"CHAPTER – 8: CONTRACT MANAGEMENT" of the General Financial Rules, 2005 contain the norms and principles governing contracts entered into by Government.
Rule 204. General principles for contract: The following general principles should be observed while entering into contracts:

(i) The terms of contract must be precise, definite and without any ambiguities. The terms should not involve an uncertain or indefinite liability, except in the case of a cost plus contract or where there is a price variation clause in the contract.
(ii) Standard forms of contracts should be adopted wherever possible, with such modifications as are considered necessary in respect of individual contracts. The modifications should be carried out only after obtaining financial and legal advice.
(iii) In cases where standard forms of contracts are not used, legal and financial advice should be taken in drafting the clauses in the contract.
(iv) (a) Department may, at its discretion, make purchases of value up to Rupees one lakh by issuing purchase orders containing basic terms and conditions. (b) In respect of Works Contracts, or Contracts for purchases valued between Rupees one lakh to Rupees ten lakhs, where General Conditions of Contract (GCC), Special Conditions of Contract (SCC) and scope of work, the letter of acceptance will result in a binding contract. (c)

In respect of contracts for works with estimated value of Rupees ten lakhs or above or for purchase above Rupees ten lakhs, a Contract document should be executed, with all necessary clauses to make it a self-contained contract. If however, these are preceded by Invitation to Tender, accompanied by GCC and SCC, with full details of scope and specifications, a simple one page contract can be entered into by attaching copies of the GCC and SCC, and details of scope and specifications, Offer of the Tenderer and Letter of Acceptance. (d) Contract document should be invariably executed in cases of turnkey works or agreements for maintenance of equipment, provision of services etc.

(v) No work of any kind should be commenced without proper execution of an agreement as given in the foregoing provisions.

(vi) Contract document, where necessary, should be executed within 21 days of the issue of letter of acceptance. Non-fulfillment of this condition of executing a contract by the Contractor or Supplier would constitute sufficient ground for annulment of the award and forfeiture of Earnest Money Deposit.

(vii) Cost plus contracts should ordinarily be avoided. Where such contracts become unavoidable, full justification should be recorded before entering into the contract. Where supplies or special work covered by such cost plus contracts have to continue over a long duration, efforts should be made to convert future contracts on a firm price basis after allowing a reasonable period to the suppliers/contractors to stabilize their production /execution methods and processes.

Explanation : A cost plus contract means a contract in which the price payable for supplies or services under the contract is determined on the basis of actual cost of production of the supplies or services concerned plus profit either at a fixed rate per unit or at a fixed percentage on the actual cost of production.

(viii)

(a) Price Variation Clause can be provided only in long-term contracts, where the delivery period extends beyond 18 months. In short-term contracts firm and fixed prices should be provided for. Where a price variation clause is provided, the price agreed upon should specify the base level viz, the month and year to which the price is linked, to enable variations being calculated with reference to the price levels prevailing in that month and year.

(b) A formula for calculation of the price variations that have taken place between the Base level and the Scheduled Delivery Date should be included in this clause. The variations are calculated by using indices published by Governments or Chambers of Commerce periodically. An illustrative formula has been appended to these rules at Appendix -15 for guidance.

(c) The Price variation clause should also specify cut off dates for material and Labour, as these inputs taper off well before the scheduled Delivery Dates.

(d) The price variation clause should provide for a ceiling on price variations, particularly where escalations are involved. It could be a percentage per annum or an overall ceiling or both. The buyer should ensure a provision in the contract for benefit of any reduction in the price in terms of the price variation clause being passed on to him.

(e) The clause should also stipulate a minimum percentage of variation of the contract price above which price variations will be admissible (e.g. where resultant increase is lower than two per cent. no price adjustment will be made in favour of the supplier).

(f) Where advance or stage payments are made there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment.

(g) Where deliveries are accepted beyond the scheduled Delivery Date subject to levy of liquidated damages as provided in the Contract, the liquidated damages (if a percentage of the price) will be applicable on the price as varied by the operation of the Price variation clause.

(h) No price variation will be admissible beyond the original Scheduled Delivery Date for defaults on the part of the supplier.

(i) Price variation may be allowed beyond the original Scheduled Delivery Date, by specific alteration of that date through an amendment to the contract in cases of Force Majeure or defaults by Government.

(j) Where contracts are for supply of equipment, goods etc, imported (subject to customs duty and foreign exchange fluctuations) and / or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item. The mode of calculation of variations in duties and taxes and Foreign exchange rates and the documents to be produced in support of claims for such variations should also be stipulated in the Contract.

(k) The clause should also contain the mode and terms of payment of the price variation admissible.

(ix) Contracts should include provision for payment of all applicable taxes by the contractor or supplier.

(x) "Lump sum' contracts should not be entered into except in cases of absolute necessity. Where lump sum contracts become unavoidable, full

justification should be recorded. The contracting authority should ensure that conditions in the lump sum contract adequately safeguard and protect the interests of the Government.

(xi) Departmental issue of materials should be avoided as far as possible. Where it is decided to supply materials departmentally, a schedule of quantities with the issue rates of such material as are required to execute the contract work should form an essential part of the contract.

(xii) (a) In contracts where Corporation property is entrusted to a contractor either for use on payment of hire charges or for doing further work on such property, specific provision for safeguarding government property (including insurance cover) and for recovery of hire charges regularly, should be included in the contracts. (b) Provision should be made in the contract for periodical physical verification of the number and the physical condition of the items at the contractor's premises. Results of such verification should be recorded and appropriate penal action taken where necessary.

(xiii) Copies of all contracts and agreements for purchases of the value of Rupees Twenty-five Lakhs and above, and of all rate and running contracts entered into by civil departments of the Government other than the departments like the Directorate General of Supplies and Disposals for which a special audit procedure exists, should be sent to the Audit Officer and /or the Accounts officer as the case may be.

(xiv) (a) The terms of a contract, including the scope and specification once entered into, should not be materially varied. (b) Wherever material variation in any of the terms or conditions in a contract becomes unavoidable, the financial and other effects involved should be examined and recorded and specific approval of the authority competent to approve the revised financial and other commitments obtained, before varying the conditions. (c) All such changes should be in the form of an amendment to the contract duly signed by all parties to the contract.

(xv) Normally no extensions of the scheduled delivery or completion dates should be granted except where events constituting force majeure, as provided in the contract, have occurred or the terms and conditions include such a provision for other reasons. Extensions as provided in the contract may be allowed through formal amendments to the contract duly signed by parties to the contract.

(xvi) All contracts shall contain a provision for recovery of liquidated damages for defaults on the part of the contractor.

(xvii) A warranty clause should be incorporated in every contract, requiring the supplier to, without charge, repair or rectify defective goods or to replace such goods with similar goods free from defect. Any goods repaired or replaced by the supplier shall be delivered at the buyers premises without costs to the buyer.

(xviii) All contracts for supply of goods should reserve the right of Government to reject goods which do not conform to the specifications.

(xix) A proper provision for supply of spare parts required in day to day maintenance of the equipment, as well as after sale service and liability for handling of annual maintenance contract by the supplier in the cases of sophisticated and costly equipments may be made in the contract agreement.

CHAPTER – 4

SPECIFICATION AND ALLIED TECHNICAL PARTICULARS OF GOODS

4.1 Basic Guidelines

The important aspects to be kept in view while formulating the specifications and other technical particulars of the goods to be purchased are indicated in the following paragraphs.

The specifications of the goods shall meet only the actual and essential needs of the user because "over-specification" will unnecessarily increase the cost and may stifle competition. Specifications should aim at procuring the latest technology and avoid procurement of obsolete goods. Specifications should have emphasis on factors like efficiency, optimum fuel/power consumption, use of environmental-friendly materials, reduced noise and emission levels, low maintenance cost etc. Further, the specifications should not be too restrictive as the aim should be to attract reasonable number of competitive tenderers. The specifications should also take care of the mandatory and statutory regulations, if

any, applicable for the goods to be purchased. Wherever Indian Standards exists for the required goods, the same should be adopted. Preference should be given to procure the goods, which carry BIS (Bureau of Indian Standards) mark. For any deviations from Indian Standards or for any additional parameters for better performance, specific reasons for deviations / modifications should be duly recorded with the approval of the competent authority. Some Departments publish their own standards, which, apart from specifying the technical parameters also specify special requirements of packing, marking, inspection etc. The technical parameters in such cases may be marginally different from the Indian Standards. In such cases, the general principle shall be to adopt Indian Standards and the departmental specifications could cover only such additional details as packing, marking, inspection etc. as are specially required to be complied for a particular end use.

In cases where Indian Standards do not exist or, alternatively, decision has been taken to source the foreign markets also, International Standards (like ISO etc.) may be adopted. Where no widely known standards exist, the specifications shall be drawn in a generalized and broad-based manner to obtain competitive bids from different sources. Except in case of proprietary purchase from a selected single source, the specifications must not contain any brand name, make or catalogue number of a particular manufacturer and if the same is unavoidable due to some compelling reasons, it should be followed by the words "or equivalent". All dimensions incorporated in the specifications shall be indicated in metric units. If due to some unavoidable reasons, dimensions in FPS units are to be mentioned, the corresponding equivalents in the metric system must also be indicated.

The specifications and the technical details should be expressed with proper clarity without any ambiguity or double meaning. Wherever necessary, the written specifications should be supplemented with drawings for additional clarity etc. Deciding tender on the basis of tendered sample is too subjective. Therefore, unless specifically decided due to some reasons duly recorded with the approval of competent authority, tender sample clause shall not be incorporated in the specifications. If necessary, suitable stipulations for submission of advance sample (before starting bulk production) by the successful bidder may be incorporated in the specifications.

4.2 Essential Technical Particulars

Technical particulars to be specified in the tender document shall include the following to the extent applicable for a particular purchase:

i) Scope of supply including quantity required and, also, end use of the required goods.
ii) Specifications, technical parameters and product requirements, expressing the requirement in terms of functional characteristics.
iii) Drawings.
iv) Requirement of BIS mark, where applicable.

v) Requirement of advance sample, if any, at post contract stage before bulk production.
vi) Special requirements of packing and marking, if any.
vii) Inspection procedure for goods ordered and criteria of conformity.
viii) Requirements of special tests, if any.
ix) Requirement of type test certificate, if any.
x) Requirement of type approval for compliance of statutory requirements i.e. pollution, emission, noise, etc.
xi) Training, technical support, after sales service and annual maintenance contract requirements, if any.
xii) Warranty requirements.
xiii) Qualification criteria of the tenderers.
xiv) Any other aspects peculiar to the goods in question like shelf life of the equipment etc.

4.3 Certification

The official / authority formulating the specifications should ensure and also certify that the specifications and the allied technical details are complete and correct to meet the user's requirements fully.

CHAPTER – 5

SOURCES OF SUPPLY AND REGISTRATION OF SUPPLIERS

5.1 Eligible and Qualified Supplier

Contract for supply of goods is to be placed on a supplier who is eligible to receive the contract, and, also capable, i.e. qualified in all respects to 'deliver the goods'. The supplier is required to fulfill and follow all applicable rules, regulations and conditions to transact business with the Government and it should be technically capable and financially sound to deliver the required goods. There are thus two basic criteria to be fulfilled by the supplier to receive a government contract – Eligibility Criteria and Qualification Criteria.

The suppliers/firms with whom government transactions have been banned or suspended due to any reason including corrupt and fraudulent practices adopted by them will not be eligible to receive government contract. Further, if the purchasing authority engages a consultant to prepare a project report, that

consultant will not be eligible to quote against the tender enquiry subsequently floated by Corporation for purchase of goods for that project.

5.2 Registration of Suppliers – Basic Guidelines

With a view to establish reliable sources for procurement of goods commonly required the purchase officer should prepare prepare and maintain item-wise lists of eligible and qualified (i.e., capable) suppliers. Such approved suppliers will be known as "Registered Suppliers". This list may be utilized as and when necessary. Such registered suppliers are prima facie eligible for consideration for procurement of goods through Limited Tender Enquiry. They are also ordinarily exempted from furnishing earnest money deposit/bid security with their tenders.

The supplier(s) will be registered for a fixed period (between 1 to 3 years) depending on the nature of the goods and their performance, at the end of this period, the registered Supplier, who are willing to continue with registration are to apply afresh for renewal of registration. New supplier(s) may also be considered for registration at any point of time, provided they fulfill all the required conditions. Performance and conduct of every registered supplier is to be watched by the concerned Regional Director / Medical Superintendents etc. The registered supplier(s) are liable to be removed from the list of approved suppliers if they fail to abide by the terms and conditions of the registration, etc.

5.3 Eligibility for Registration

Any firm, situated in India or abroad, who are in the business of manufacturing, stocking or marketing of goods and operating operator of services of specified categories, shall be eligible for registration.

Where registration is granted based on partly outsourced arrangements / agreements, it shall be the responsibility of the registered unit, to keep such arrangements / agreements renewed / alive at all times, to keep their registration valid for the period for which, it has been granted. Any failure in this regard may make the registration null and void / ineffective retrospectively, from any such dates, which the registering authority considers appropriate. Firm, against whom punitive action has been taken, shall not be eligible for re-registration for a period of two years or as prescribed. Registration requests may not be entertained from such firms, stake holders of whom have any interest in deregistered / banned firms.

5.4 Communication of Deficiencies to Firms

In cases where the firm is not considered capable and registration cannot be granted, concerned authority shall communicate the deficiencies and shortcomings direct to the firms under intimation to the Appellate authority. Where request for re- verification and review is made by the firm, along with any fee as prescribed and within the period prescribed by the department, review shall be undertaken.

Requests for re-verification after expiry of the said period would be treated as fresh application and processing fee, if any prescribed, charged accordingly.

5.5 Removal of Firms from the list of Approved Contractors

In case of violation of terms and condition of the registration, the registration of the firm will be cancelled by giving prior notice. A registered firm is liable to be removed from the list of approved contractors, when,

(a) It fails to abide by the terms and conditions under which the registration has been given.
(b) Makes any false declaration.
(c) Supplies goods of inferior quality or uninspected goods.
(d) Renders services (including after sales services and maintenance services) of inferior quality than the contracted ones.
(e) Fails to execute a contract or fails to execute it satisfactorily.
(f) The required technical / Operational staff or equipment are no longer available with the firm or there is change in its production/service line affecting its performance adversely.
(g) Is declared bankrupt or insolvent.
(h) Fails to submit the required documents/information for review of registration, where required.
(i) adopts unethical business practices, not acceptable to the government, and
(j) Any other ground which, in the opinion of the registering authority, is not in public interest.

5.6 Banning and Suspension of Business Dealings with the Contractors

Business dealings with a firm, whether it is registered or not registered, may be ordered to be suspended or banned, in public interest by the competent authority.

5.7 Grounds for Suspension of Business Dealings with Firms

Suspension of business dealings may be ordered where pending full enquiry into the allegation, it is considered not desirable that business with the firm should continue. Such an order may be passed: -

(i) If the firm is suspected to be of doubtful loyalty to India.
(ii) If the Central Bureau of Investigation or any other investigating agency recommends such a course in respect of a case under investigation and
(iii) If a prima- facie case is made out that the firm is guilty of an offence involving moral turpitude in relation to business dealings which, if established, would result in business dealings with it being banned.

5.8 Grounds for Banning of Business Dealings

The grounds on which banning may be ordered are: -

i) If security considerations including question of loyalty to the State so warrant.

ii) If the proprietor of the firm, its employee, partner or representative is convicted by a court of law following prosecution for offences involving moral turpitude in relation to the business dealings.

iii) If there is strong justification for believing that the proprietor or employee or representative of the firm has been guilty of malpractice such as bribery, corruption, fraud, substitution of tenders, interpolation, mis-representation, evasion or habitual default in payment of any tax levied by law; etc.

iv) If the firm continuously refuses to return Corporation dues without showing adequate cause and the Corporation is satisfied that this is not due to reasonable dispute which would attract proceeding in arbitration or court of law, and

v) If the firm employs a government servant, who has been dismissed or removed on account of corruption or employs a non-official convicted for an offence involving corruption or abetment of such an offence, in a position where he could corrupt government servants.

5.9 Compulsory Enlistment of Indian Agents

As per the Compulsory Enlistment Scheme of the Department of Expenditure, Ministry of Finance, it is compulsory for Indian agents who desire to quote directly on behalf of their foreign manufacturers/principals, to get themselves enlisted with the Department of Expenditure, through the Central Purchase Organization (e.g. DGS&D).

The compulsory enlistment of Indian Agents under the scheme of Ministry of Finance is simpler and differs from the registration of Indian Agents with the Central Purchase Organization (e.g. DGS&D) described in the earlier paragraphs.

The registration of the foreign manufacturer is not a must for enlisting the Indian Agent under this scheme. No Inspection Report in respect of the foreign manufacturer/principal is necessary. The enlistment under the scheme is not equivalent to the Registration with DGS&D. Such firms do not enjoy the same status as that of DGS&D registered suppliers. A note to this effect is given in the Enlistment Letter to the firm.

CHAPTER – 6
MODES OF PURCHASE, RECEIPT AND OPENING OF TENDERS

6.1 General

Depending on the nature of the required goods, the quantity & value involved and the period of supply, the RD/MS/Director (Medical) ESI Scheme or AC (P&A) in case of Hqrs. Office is to decide the appropriate mode of purchase. The various modes of purchase to be adopted for this purpose are indicated in the subsequent paragraphs.

6.2 Approval of the competent authority to the purchase

Demand for Goods should not be divided into smaller quantities for making piece meal purchases for the sole purpose of avoiding the necessity of obtaining the sanction of higher authority required with reference to the estimated value of the total demand.

6.3 Purchase of Goods without Quotation

Purchase of goods up to a value of Rs 15,000/- (Rs Fifteen Thousand only) on each occasion may be made without inviting quotations/bids by the competent authority on the basis of a certificate to be recorded by him in the following format:

"I, _____ am personally satisfied that these goods purchased are of the requisite quality and specification and have been purchased from a reliable supplier at a reasonable price."

6.4 Purchase of goods by Purchase Committee

Purchase of goods costing above Rs.15,000/- (Rs. Fifteen Thousand only) and up to Rs.1, 00,000/- (Rs. One lakh only) on each occasion may be made on the recommendations of a duly constituted Local Purchase Committee consisting of three members of an appropriate level as decided by the RD/MS/Director (Medical) ESI Scheme or AC (P&A) in case of Hqrs. Office. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier. Before recommending placement of the purchase order the members of the committee will jointly record a certificate as under: "Certified that we _____, members of the purchase committee are jointly and individually satisfied that the goods recommended for purchase are of the requisite specification and quality, priced at the prevailing market rate and the supplier recommended is reliable and competent to supply the goods in question."

6.5 Purchase of Rate Contracted Goods

The purchase of the items / equipments like fridge, ACs which are available on DGS&D rate contract should be made only on the rate contract. The prices to be paid for such goods shall not exceed those stipulated in the rate contract and the other salient terms and conditions of the purchase should be in line with those specified in the rate contract. The purchase office shall make its own arrangement for inspection and testing of such goods where required.

6.6 Purchase of Goods by obtaining Tenders

Except for the purchase of goods through the methods given in the preceding paragraphs, the controlling officer / head of the offices shall procure

goods within their delegated powers by following the standard method of obtaining tenders as follows:
(i) Advertised Tender Enquiry (ATI)
(ii) Limited Tender Enquiry (LTI)
(iii) Single Tender Enquiry (STI)

6.7 Advertised Tender Enquiry (ATI)

Subject to exceptions incorporated under paragraphs 6.11 (Limited Tender Enquiry) and 6.21 (Single Tender Enquiry) below, invitation to tenders by advertisement should be used for procurement of goods of estimated value of Rs.25 lakhs (Rupees Twenty Five Lakhs only) and above.

Advertisement (in the form of a Tender Notice) relating to ATI should be given in the Indian Trade Journal (ITJ) published by the Director General of Intelligence and Statistics, Kolkata and at least in two national daily having wide circulation. Further, it should also be placed on the ESIC web site. Where it feels that the goods of the required quality, specifications etc., (specifically in the cases of medical equipments) may not be available in the country and/or it is also necessary to look for suitable competitive offers from abroad, the Medical Division of the Hqrs. Office may send copies of the tender notice to the Indian Embassies abroad as well as to the Foreign Embassies in India requesting them to give wide publicity of the requirement in those countries. They may also be requested to put the tender notice in their web sites. The selection of the embassies will depend on the possibility of availability of the required goods in such countries. Publicizing the requirement globally as above is also known as Global Tender Enquiry.

Ordinarily, the minimum time to be allowed for submission of bids should be three weeks from the date of publication of the tender notice or availability of the bidding document for sale, whichever is later. Where the department also contemplates obtaining bids from abroad, the minimum period should be kept as four weeks for both domestic and foreign bidders.

6.8 Text of Tender Notice

The tender notice for an ATI should be carefully drafted. It should contain all the salient features of the requirement in brief to give a clear idea to the prospective tenderers about the requirements. Superfluous or irrelevant details should not be incorporated in the tender notice, as it will increase the cost of the advertisement. The Tender Notice should contain:

- Description and specification of the goods and quantity
- Period and terms of delivery
- Cost of the tender/bidding document
- Place(s) and timing of sale of tender documents
- Place and deadline for receipt of tenders

- Place, time & date for opening of tenders
- Amount & Form of Bid Security / Earnest Money Deposit
- Any other important information

6.9 Cost of Tender Documents

Price of the tender document should take care of the preparation and delivering cost only. If it is too high, it will discourage the prospective bidders to purchase the document and participate in the bidding process.

6.10 Sale of Tender Documents

Tender documents should preferably be sold upto one day prior to date of opening of tenders and the same should be clearly indicated in the documents. The organization should also post the complete tender document in the web site and permit prospective tenderers to make use of the document downloaded from the web site. If the tender document is a priced one, there should be clear instructions for the tenderers in the document (which has been downloaded) to pay the amount by demand draft etc. along with the tender, prepared in the downloaded document.

The sale of tender documents against ATI should not be restricted and should be available for sale freely. The purchase organization shall maintain proper records about the number of tender documents sold, list of parties to whom sold, details of the amount received through sale and, also, the number of unsold tender documents, which are to be cancelled after the opening of the tenders.

6.11 Limited Tender Enquiry (LTI)

This method may be adopted when estimated value of the goods to be procured is up to Rs.25 lakhs. Copies of the bidding document should be sent, directly by speed post/registered post/courier/e-mail, simultaneously to all the firms, which are borne on the list of registered suppliers for the goods in question as referred in Chapter 5. The number of supplier firms in LTI should be more than three. Efforts should be made to identify a higher number of approved suppliers to obtain more responsive bids on competitive basis. Web site publicity should also be given for LTIs; however, the Ministry / Department can limit the access of the tender documents to only the selected prospective suppliers by issuing them password to have access to the document. Purchase through LTI may be adopted even when the estimated value of the procurement is more than Rs.25 lakh, in the following circumstances:

(a) The competent authority certifies that the demand is urgent and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The competent authority should also put on record the nature of the urgency and reasons why the procurement could not be anticipated earlier.

(b) There are sufficient reasons, to be recorded in writing by the competent authority, indicating that it will not be in public interest to procure the goods through advertised tender enquiry.
(c) The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped is remote.
(d) Nature of items to be procured is such that pre-verification of competence of firm is essential, hence requires registration of firms.
(e) Sufficient time should be allowed for submission of bids in Limited Tender Enquiry cases.

6.12 Pre-bid Conference

In case of turn-key contract or contract of special nature for purchase of sophisticated and costly equipment, a suitable provision is to be kept in the tender enquiry document for a pre-bid conference for clarifying issues and clearing doubts, if any, about the specification and other allied technical details of the plant, equipment and machinery projected in the tender enquiry document. The date, time and place of pre-bid conference should be indicated in the tender enquiry document for information of the interested tenderers. This date should be sufficiently ahead of tender opening date.

6.13 Format of Tender

The tenderers are to furnish their quotations as per the prescribed format and also as per the instructions incorporated in the tender documents. Quotations sent by telex, cable or facsimile are to be ignored and rejected.

6.14 Sealing and Marking of Tenders

The tender document is to indicate the total number of tender sets (e.g., in duplicate or in triplicate etc) required to be submitted. The tenderer is to seal the original and each copy of the tender in separate envelopes, duly marking the same as “original”, “duplicate” and so on and also putting the address of the purchase office and the tender reference number on the envelopes. Further, the sentence ‘’NOT TO BE OPENED” before …….. (due date & time of tender opening) are also to be put on these envelopes. The inner envelopes are then to be put in a bigger outer envelope, which will also be duly sealed marked etc. as above. If the outer envelope is not sealed and marked properly as above, the purchaser will not assume any responsibility for its misplacement, premature opening, late opening etc.

All the above instructions are to be suitably incorporated in the tender documents.

6.15 Extension of Tender Opening Date

Sometimes, situations may arise necessitating modification of the tender documents already issued (LTI case) or already put on sale (ATI case). Also, after

receiving the documents, a tenderer may point out some genuine mistakes necessitating amendment in the tender documents. In such situations, it is necessary to amend/modify the tender documents suitably prior to the date of submission of bids. Copies of such amendment / modification should be simultaneously sent to all the selected suppliers by registered/speed post/courier/e-mail in case of LTI. In case of ATI, the copies of such amendment / modification are to be simultaneously dispatched, free of cost, by registered/speed post/courier/e-mail, to all the parties who have already purchased the tender documents and copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale), including the tender documents put in the web site.

When the amendment/modification changes the requirement significantly and /or when there is not much time left for the tenderers to respond to such amendments, and prepare revised tender, the time and date of submission of tenders are also to be extended suitably, along with suitable changes in the corresponding time-frames for receipt of tender, tender validity period etc and validity period of the corresponding EMD/bid security.

6.16 Amendments / Modifications to Tenders

The tenderer, after submitting its tender, is permitted to submit alterations/modifications to its tender so long such alterations/modifications are received duly sealed and marked like original tender, up to the date & time of receipt of tender. Any amendment/modification received after the prescribed date & time of receipt of tenders are not to be considered. Para 7.2 (Forfeiture of EMD) of Chapter 7 also refers in this regard.

6.17 Receipt and Custody of Tenders

Receipt and custody of tenders shall be done in a transparent manner. Tenders are to be received though tender box and, in its absence, by hand delivery to the nominated officials of the RD/MS/D(M)D etc.

The tender box should be located in a place, which is easily accessible to the parties for dropping their tenders. The tender box shall have two locks. Key of one lock will be with the head of the office and the other key with the official nominated by him. On each occasion of tender opening, the tender box will be opened by two officials at the prescribed date and time (as per the date & time specified for receipt of tenders) and the relevant tenders will be taken out. In the tender box, there may be tenders for other cases due for opening later; such tenders are to remain in the tender box under lock and key. The tenders so taken out are to be entered in a challan in duplicate duly signed with date and time by the two officials and sent to the officials authorized to open the tenders. Signatures of the receiving officials will be obtained on the duplicate copy of the challan for record. There should be at least two officials nominated for opening of tenders; a model format for this purpose is given in Annexure ‘A’ of Chapter.

There may be cases where the tenders are too bulky to be put in the tender box or the purchase office is yet to install tender box and, therefore, the tenders are to be submitted by hand. In such cases, it should be ensured that names and designations of at least two officers, who will receive the tenders, are prominently mentioned in the tender documents. The information about these officers should also be displayed at the entrance / reception of the premises where tenders are to be deposited. The officer receiving a tender is to give the bearer of the tender a receipt duly signed by him with date and time of receipt of the tender. A separate register is to be maintained for keeping records of the bids, received by hand. Such bids will be kept in safe custody with the head of the office or his authorized representative till the date & time of bid opening and then such bids will be handed over to the bid opening officer through challan, in identical manner as mentioned in the previous paragraph.

Sometimes, tenders are also received by post. Such tenders shall be received and documented in identical manner as applicable for tenders received through hand delivery.

6.18 Late Tender

In the case of advertised tender enquiry or limited tender enquiry, late tenders (i.e., tenders received after the specified date and time for receipt of tenders) should not be considered.

6.21 Opening of Tenders

All the tenders received on time shall be opened in the presence of authorized representatives of the tenderers (who have submitted regular tenders) at the prescribed time, date and place. The authorized representatives, who intend to attend the tender opening, are to bring with them letters of authority from the corresponding tenderers.

Tenders should be opened immediately after the deadline of receipt of tenders with minimum time gap in between. At least two duly authorized one official of the purchase department and other from the Finance Division of the Regional Office, ESI Hospital, Directorate (Medical) ESI Scheme or Hqrs. Office as the case may be should jointly open the tenders.

The tender opening officials are to announce the salient features of the tenders like description and specification of the goods, quoted price, terms of delivery, delivery period, discount if any, whether EMD furnished or not and any other special feature of the tender for the information of the representatives attending the tender opening.

After opening, every tender shall be numbered serially, initialled, and dated on the first page by all the officials authorized to open the tenders. Each page of the price schedule or letter attached to it shall also be initialled by them with date, particularly the prices, delivery period etc., which shall also be circled and

initialled with date. Blank tenders, if any, should be marked accordingly by the tender opening officials.

The original, duplicate, triplicate copies in a tender set are to be marked accordingly by the tender opening officials. Alterations in tenders, if any, made by the tenderers, shall be initialed with date & time by the officials opening the tenders to make it perfectly clear that such alteration were present on the tenders at the time of opening. Wherever any erasing or cutting is observed, the substituted words should also be encircled and initialled with date & time to make clear that such erasing/cutting of the original entry was present on the tender at the time of opening.

6.19 Responsibility of the Tender Opening Officials

In addition to what has been mentioned in Para no.6.21 above, the tender opening officials will prepare a list of the representatives attending the tender opening and obtain their signatures on the same. The list will also contain the representatives' names and the corresponding tenderers' names & addresses. The authority letters brought by the representatives will be attached with this list. This list will be signed by both the tender opening officials with date & time.

An on-the-spot report containing the names of the tenderers (serial number wise) salient features of the tenders, as read out during public opening of tenders will be prepared by the tender opening officers duly signed by them with date & time. The tenders, which have been opened, the list of the representatives attending the tender opening and the on-the spot report are to be handed over to the nominated purchase officer and acknowledgement obtained for the same.

6.20 Two Bid System

For purchasing capital equipment, high value plant, machinery, etc. of complex and technical nature, tender enquiry document, complete in all respects, may be issued as usual. However, the tenderers should be asked to bifurcate their quotation in two parts. The first part is to contain the relevant technical specifications and allied commercial details as required in terms of the tender enquiry documents and the second part should contain only the price quotation. The first part is commonly known as 'Technical Bid' and the second part 'Financial Bid'.

The technical bid and the financial bid should be sealed by the tenderer in separate covers duly super scribed and both these sealed covers are to be put in a bigger cover which should also be sealed and duly super scribed following similar procedure as prescribed under para 6.16 of this chapter. The technical bids are to be opened in the first instance, at the prescribed time & date and the same will be scrutinized and evaluated by the competent committee/authority with reference to parameters prescribed in the tender documents and the offers received from the tenderers. Thereafter, in the second stage, the financial bids of only the technically

acceptable offers (as decided in the first stage above) are to be opened for further scrutiny, evaluation, ranking and placement of contract.

6.21 Single Tender Enquiry (STI)

Obtaining quotation by issuing single tender enquiry to a selected source amounts to purchase without generating competition. Therefore this mode of purchase should be resorted to only in unavoidable situations.

Purchase through STI may be adopted when:

i) It is in the knowledge of the user department that only a particular firm is the manufacturer of the required goods. The reason for arriving to this conclusion is to be recorded and approval of the competent authority obtained.

ii) In a case of emergency, the required goods are necessarily to be purchased from a particular source subject to the reason for such decision being recorded and approval of the competent authority obtained.

iii) For standardization of machinery or components or spare parts to be compatible to the existing sets of machinery/equipment (on the advice of a competent technical expert and approved by the competent authority), the required goods are to be purchased only from a selected firm.

Note: Proprietary Article Certificate in the following form is to be provided by the purchase officer before procuring the goods from a single source under the provision of sub-para (i) & (iii) above as applicable:

i) The indented goods are manufactured by M/s……

ii) No other make or model is acceptable for the following reasons: …….. …….. ……..

iii) Concurrence of finance wing to the proposal has been obtained vide :……

iv) Approval of the competent authority has been obtained vide :……..

_____

_____

(Signature with date and designation of the procuring officer)

Suitable tender document, containing required terms & conditions are to be issued to the selected firm for preparing and sending its quotation. The question of 'late tender' as well as elaborate process of receipt & opening of tender, as applicable for ATI and LTI will not apply in case of procurement through single tender enquiry.

CHAPTER – 7

EARNEST MONEY AND SECURITY DEPOSITS

7.1 Earnest Money Deposit (EMD)

Earnest Money Deposit (EMD) is also known as Bid Security. To safeguard against a bidder's withdrawing / altering its bid during the bid validity period in the case of advertised or limited tender enquiry, EMD is to be obtained from the bidders except those who are registered with Central Purchase Organization (e.g. DGS&D), National Small Industries Corporation or the concerned Ministry / Department. The bidders are required to furnish EMD along with their bids. Amount of EMD should ordinarily be between 2% to 5 % of the estimated value of the goods to be purchased. Depending on the type of goods to be purchased, total value of purchase and urgency of requirement, the exact amount of EMD should be decided by the RD/MS/Director (Medical) ESI Scheme / AC (P&A) in case of Hqrs. Office as the case may be and indicated in the tender enquiry document.

Submission of EMD is not necessary for a contract value upto Rs.1 lakh. The EMD may be accepted in the form of Account Payee Demand Draft, Fixed Deposit Receipt, Banker's Cheque or a Bank Guarantee, safeguarding the purchaser's interest in all respects. A model format of Bank Guarantee for obtaining EMD is provided at Annexure 'B'. The EMD should remain valid for a period of 45 days beyond the final tender validity period.

7.2 Forfeiture of EMD

EMD of a tenderer will be forfeited, if the tenderer withdraws or amends its tender or impairs or derogates from the tender in any respect within the period of validity of its tender. Further, If the successful tenderer fails to furnish the required performance security within the specified period, its EMD will be forfeited.

7.3 Refund of EMD

EMD furnished by all unsuccessful tenderers should be returned to them without any interest whatsoever, at the earliest after expiry of the final tender validity period but not later than 30 days after conclusion of the contract. EMD of the successful tenderer should be returned, without any interest whatsoever, after receipt of performance security as called for in the contract.

7.4 Security Deposit

To ensure due performance of the contract, Security Deposit is to be obtained from the successful bidder awarded the contract. Security Deposit is to be

obtained from every successful bidder irrespective of its registration status etc. Security Deposit should be for an amount of five to ten per cent. Of the value of the contract. Security Deposit may be furnished in the form of an Account payee Demand Draft, Fixed Deposit Receipt or Bank Guarantee from a bank in an acceptable form safeguarding the purchaser's interest in all respects.

Security Deposit is to be furnished by a specified date (generally 21 days after notification of the award) and it should remain valid for a period of 60 days beyond the date of completion of all contractual obligations of the supplier, including warranty obligations. A model format of Bank Guarantee for obtaining Security Deposit is provided at Annexure 'C'. Submission of Security Deposit is not necessary for a contract value up to Rs.1 lakh.

7.5 Forfeiture of Security Deposit

Security Deposit is to be forfeited and credited to the Corporation A/c. in the event of a breach of contract by the supplier, in terms of the relevant contract.

7.6 Refund of Security Deposit

Security Deposit should be refunded to the supplier without any interest, whatsoever, after it duly performs and completes the contract in all respects but not later than 60 days of completion of all such obligations under the contract.

7.7 Verification of the Bank Guarantees

Bank Guarantees submitted by the tenderers / suppliers as EMD / Security Deposit needs to be immediately verified from the issuing Bank before acceptance.

7.8 Safe Custody and Monitoring of EMDs, Security Deposits & Other Instruments

Suitable mechanism for safe custody, etc. and monitoring of EMDs and Security Deposits and other Instruments should be evolved and implemented by each purchasing officer. The purchasing officer shall also make institutional arrangements for taking all necessary actions on time for extension or encashment or refund of EMDs and Security Deposit, as the case may be. Monitoring should also include a monthly review of all Bank Guarantees and other instruments expiring after 3 months, along with a review of the progress of the corresponding contracts. Extension of Bank Guarantees and other instruments, where warranted, should be sought immediately and implemented within their validity period.

CHAPTER – 8

DELIVERY PERIOD, TERMS OF DELIVERY, TRANSPORTATION, TRANSIT INSURANCE, DELAY IN SUPPLY, CANCELLATION OF CONTRACT

8.1 Introduction

In this chapter, the issues concerning Delivery Schedule including Transportation & Transit Insurance and various aspects covering Delays in Supply have been discussed.

8.2 Delivery Period

The period for delivery of the ordered goods and completion of any allied service(s) thereof (like installation and commissioning of the equipment, operators' training, etc.) are to be properly specified in the contract with definite dates and the same shall be deemed to be the essence of the contract. Expressions such as 'immediate', 'ex-stock', "as early as possible', 'off the shelf', etc. must not be used to indicate contractual delivery period.

8.3 Terms of Delivery

The terms of delivery is decided depending on the nature of goods to be purchased, transportation facility available, location of the user, location of the prospective suppliers etc. Terms of delivery inter alia determine the delivery point of the ordered goods from where the purchaser is to receive / collect the goods. Terms of delivery have direct bearing on the quoted prices.

8.4 Linkage between Terms of Delivery & Date of Delivery

Delivery dates in respect of contracts incorporating standard and commonly used terms of delivery shall be deemed to be as follows:

Terms of Delivery	Date of Delivery
Ex-Works	The date the supplier delivers the goods to the purchaser at its (supplier's) factory/premises.
FOR, Station of Despatch (FOR stands for Free on Rail)	The date on which the goods are placed by the supplier on rail with clear RR (Rail Receipt).
FOR, Destination	The date on which the ordered goods reach the destination railway station specified in the contract.
CIP, Destination	The date on which the delivery is

(CIP stands for Carriage and Insurance paid)	Effected at the destination mentioned in the contract.
Local Delivery at Site	The date on which the delivery is Made at the consignee's site mentioned in the contract.
FAS, port of shipment (FAS stands for Free Alongside Ship)	The date on which the supplier deliver the goods alongside the vessel at the specified port of shipment. This date is reflected in the Bill of Lading.
FOB, port of shipment (FOB stands for Free on Board)	The date on which the supplier delivers the goods on vessel's board at the specified port of shipment. This date is reflected in the Bill of Lading.
CIF, port of destination (CIF stands for Cost, Insurance and Freight)	The date on which the goods arrived at the destination port.

NB : The FAS, FOB & CIF terms of delivery are applicable for goods which are directly imported from foreign countries against the subject contract and not imported already by the supplier under its own arrangement. The CIP terms of delivery may be applied both for domestic as well as imported supplies.

8.5 Instructions for Transportation of Imported Goods

As per the general policy of Government of India, all import contracts are to be concluded on FOB/FAS basis. In case any departure from the above policy including placement of contracts for import of foreign goods on CIF Indian Port/CIP Destination Basis, prior permission is required to be obtained from Ministry of Surface Transport.

In case of FOB/FAS contracts, shipping arrangements shall be made by the Shipping Co-ordination and Chartering Division/Shipping Co-ordination and Officer, Ministry of Surface Transport, New Delhi, India. Notice about the readiness of Cargo for shipment shall be given by the supplier from time to time at least 6 (six) weeks in advance for finalizing the shipping arrangement, through Fax/Telex and courier, to the Chief Controller of Chartering, Shipping Co-ordination Officer, Ministry of Surface Transport, Government of India, New Delhi. Within 3 (three) weeks of receipt of the advance notice, as above, the said Chief Controller of Chartering, Shipping Coordination Officer will advise the supplier, through Fax/Telex and courier when and on board what vessels, these goods or such part thereof are to be delivered.

If the advice for shipping arrangement is not furnished to the supplier within 3 (three) weeks as aforesaid or if the vessel arranged is scheduled to arrive at the specified port of loading later than 15 (fifteen) days of the date of readiness of cargo, as aforesaid, the supplier may arrange for such transport on alternative carriers with the prior written consent of the purchaser.

Where the supplier is required under the contract to deliver the goods on FOB/FAS basis and to arrange on behalf and at the expense of the purchaser for ocean transportation on Indian flag vessels or vessels of conference lines in which India is a member country, the supplier may arrange for such transportation on alternate carriers if the specified Indian flag vessels or conference vessels are not available to transport the goods within the time period(s) specified in the contract, with the prior written consent of the purchaser.

Should the goods or any part thereof be not delivered on the nominated vessel (except in case where prior written consent of the purchaser was obtained), the supplier will be liable for all payments and expenses that the purchaser may incur or be put to, by reason of such non-delivery including dead and extra freight, demurrage of vessels and any other charges, whatsoever incurred by the purchaser. The supplier shall not arrange part-shipments and/or transshipment without the express/prior written consent of the purchaser.

Where the supplier is required under the contract to deliver the goods under CIF/CIP terms, no further restriction shall be placed on the choice of the ocean carrier except that the shipment shall be made by Indian flag vessel or by vessels belonging to the conference lines in which India is a member country.

The relevant rules etc. for shipping of imported goods are contained in the notifications dated 27.02.1996 and 11.02.1998 issued by Ministry of Surface Transport (chartered wing). Copies of the same are provided at Annexure 'D' & 'E' of Chapter 16.

Before processing any case for placement of contract on FAS/FOB/ CIF/CIP basis for imported goods, the purchase organization should check the contemporary government instructions in this regard for further necessary action.

8.6 INCOTERMS

Unless otherwise specifically agreed to by the purchaser and the supplier and incorporated in the contract, the applicable rules & regulations for transportation of goods from foreign countries will be as per the contemporary version of International Commercial Terms (Incoterms) evolved by International Chamber of Commerce, Paris. Incoterms are the official rules for worldwide interpretation about the duties, obligations, etc. of the buyer and the seller for transportation of the goods from seller's country to buyer's country. Incoterms are recognized by the United Nations Commission on International Trade Law (UNCITRAL) as the global standard for such interpretation. The purchasing Ministry/Department, while ordering goods for importation from foreign countries are to take note of the same.

8.7 Air Consignment

As per the extant directive of the Government, airlifting of the imported goods from abroad will be done only through the National Carrier i.e. Air India wherever applicable. However, before processing any contract involving import of goods through air, contemporary instructions in this regard may be ascertained and followed.

8.8 Insurance

Wherever necessary, the goods supplied under the contract, shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the contract. If considered necessary, the insurance may be done for coverage on "all risks" basis including war risks and strike clauses. The amount to be covered under insurance should be sufficient to take care of the over all expenditure to be incurred by the purchaser for receiving the goods at the destination.

Note: Insurance of imported goods/equipment would need to be arranged on a very selective basis and only for cases where the value of individual shipment is expected to be in excess of Rs. 5 crore.

Where delivery of imported goods is required by the purchaser on CIF/CIP basis, the supplier shall arrange and pay for marine/air insurance, making the purchaser as the beneficiary. Where delivery is on FOB/FAS basis, marine/air insurance shall be the responsibility of the purchaser.

8.9 Distribution of Dispatch Documents for Clearance/Receipt of Goods

The supplier shall send all the relevant dispatch documents well in time to the purchaser to enable the purchaser clear or receive (as the case may be) the goods in terms of the contract. Necessary instructions for this purpose are to be incorporated in the contract. The usual documents involved and the drill to be followed in general for this purpose are as follows:

(i) For Domestic Goods

Within 24 hours of dispatch, the supplier shall notify the purchaser, consignee… (Others concerned), the complete details of dispatch and also supply following documents by registered post / speed post (or as instructed in the contract):

(a) Supplier's Invoice indicating, inter alia description and specification of the goods, quantity, unit price, total value;
(b) Packing list;
(c) Certificate of country of origin;
(d) Insurance certificate;
(e) Railway receipt/Consignment note;

(f) Manufacturer's guarantee certificate and in-house inspection certificate;
(g) Inspection certificate issued by purchaser's inspector and
(h) Any other document(s) as and if required in terms of the contract.

(ii) For Imported Goods

Within 24 hours of dispatch, the supplier shall notify the purchaser, consignee… (others concerned), the complete details of dispatch and also supply following documents by air mail / courier (or as instructed in the contract):

a. Supplier's Invoice giving full details of the goods including quantity, value, etc.;
b. Packing list;
c. Certificate of country of origin;
d. Manufacturer's guarantee and Inspection certificate;
e. Inspection certificate issued by the Purchaser's Inspector;
f. Insurance Certificate;
g. Name of the Vessel/Carrier;
h. Bill of Lading/Airway Bill;
i. Port of Loading;
j. Date of Shipment;
k. Port of Discharge & expected date of arrival of goods and
l. Any other document(s) as and if required in terms of the contract.

8.10 Installment Delivery

The goods ordered in a contract to be delivered by installments may be an "entire" contract or a "severable" contract as per illustrations given below:

i) Entire Contract: Total number of units of the required goods is 100. Delivery Schedule:
Delivery to commence after 30 days of placement of contract and to be completed within 4 months @ 25 units per month i.e., completion by 30.06.2006 or earlier.

ii) Severable Contract: Total number of units of the required goods is 100. Delivery Schedule: 25 units by 31.03.2006; 25 units by 30.04.2006; 25 units by 31.05.2006; 25 units by 30.06.2006.

In the case of a severable contract, each installment constitutes a separate contract and extension in delivery period, if needed is to be done for each installment separately. If goods are accepted after expiry of the delivery date of a particular installment without extension in delivery period being given with reservation of right to liquidated damages etc., the purchaser will not be legally

entitled to claim the liquidated damages etc. Therefore, in case of severable contract, the purchaser should watch delivery position of each installment as per the specified date for that installment, and, whenever necessary, extend the corresponding date for the installment in question or cancel that installment, in which there is delay in supply.

8.11 Delay in Supplies for which Supplier is not responsible

Normally, in the following circumstances, the contractual delivery period needs to be re-fixed to take care of the lost period, without imposing any penalty to the supplier.

i) Cases where the manufacture of stores is dependent on the approval of the advance sample and delay occurs in approving the sample though submitted by the supplier in time.
ii) Where extension in delivery period is granted on account of some omission on the part of the purchaser which affects the due performance of the contract by the supplier.
iii) Cases where the purchaser controls the entire production.

The delivery cannot be re-fixed to make a contract a 'severable' contract without the specific agreement of the supplier, if the delivery originally stipulated in the contract was in the form of an 'entire' contract.

8.12 Force Majeure

Force Majeure means an event beyond the control of the supplier and not involving the supplier's fault or negligence and which is not foreseeable. Such events may include, but are not restricted to, acts of the purchaser either in its sovereign or contractual capacity, wars or revolutions, hostility, acts of public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts, and freight embargoes.

If there is delay in performance or other failures by the supplier to perform its obligation under its contract due to event of a Force Majeure, the supplier shall not be held responsible for such delays/failures.

If a Force Majeure situation arises, the supplier shall promptly notify the purchaser in writing of such conditions and the cause thereof within twenty one days of occurrence of such event. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of Force Majeure for a period exceeding sixty days, either party may at its option terminate the contract without any financial repercussion on either side.

There may be a Force Majeure situation affecting the purchase organization only. In such a situation the purchase organization is to take up with the supplier on similar lines as above for further necessary action.

8.13 Remedies to Purchaser for delay in Supply / Non-Supply for which Supplier is responsible

The purchaser has the following options depending upon the circumstances of the case:

i) Extend the delivery with imposing of liquidated damages and other denial clauses
ii) Forfeit the Security Deposit
iii) Cancel the contract
iv) Impose other available sanctions/penalties

8.14 Liquidated Damages

There should be a suitable provision in the terms & conditions of the contract for claiming liquidated damages of appropriate amount from the supplier to take care of delays in supplies and performance, for which the supplier is responsible. Such recovery through liquidated damages should be without prejudice to the other remedies available to the purchaser under the terms of the contract. Depending on the nature and value of the goods to be ordered and the urgency of the requirement, a specific percentage of the delivered price of the delayed goods (or delayed services) for each week or part thereof delays, is to be incorporated in the contract terms. Generally, the percentage is 0.5% per week or part thereof. There should also be an appropriate maximum limit of such deduction, to be shown as a specific percentage of the contract value of delayed supplies/services and incorporated in the contract terms. This percentage is generally 10%. Any lower ceiling should be clearly justified while formulating the contract.

8.14.1 Token Liquidated Damages.

There may be situations when charging full Liquidated Damages may not be justified as the reasons for delay in delivery by the supplier may be largely due to circumstances well beyond under his control but nevertheless these may not considered adequate to waive off liquidated damages altogether or there may be such deficiencies in service for which quantification may not be feasible and no other remedy may be available. In such cases, at the sole discretion of the purchaser, Token Liquidated Damages up to 10% of the normal Liquidated Damages may be imposed by the Competent Financial Authority with the approval of IFA. Stipulations to this effect, prescribing the kind of deficiencies and scale of Token Liquidated Damages chargeable should be clearly brought out in the tender documents. This safeguard should be consistent with the provisions of Security Deposit (vide Section 7.4 of this Manual).

8.15 Extension of Delivery Period

If the supplier is unable to complete the supply within the stipulated delivery period for which the supplier is responsible, it (supplier) is required to request for extension of delivery period. If the purchaser agrees to extend the contractual delivery schedule, the same may be done by issue of an amendment to the contract with suitable denial clauses and with imposition of liquidated damages for delay. The amendment letter is to mention, inter alia that, in addition to imposition of liquidated damages, no extra price or additional cost for any reason whatsoever beyond the contractual cost will be paid to the supplier for the delayed supply; at the same time, if for any reason, whatsoever the cost of the goods to be supplied/services to be performed by the supplier decreases that benefit will be passed on to the purchaser. Supplier's unconditional acceptance of the amendment by a specified date is to be watched and if the supplier does not agree to accept the amendment letter, further action is to be taken against the supplier in terms of the contract.

Two model amendment letters for extension of contract delivery period on above lines for FOB/FAS/CIF contract and other forms of contract are given at Annexures `F' & 'G'.

8.16 Performance Notice

A situation may arise where the supply/services has not been completed within the stipulated period due to negligence / fault of the supplier; however the supplier has not made any request for extension of delivery period but the contracted goods/services are still required by the purchaser and the purchaser does not want to cancel the contract at that stage. In such a case, a Performance Notice (also known as Notice-cum-Extension Letter) may be issued to the supplier by suitably extending the delivery date and by imposing liquidated damages with denial clauses etc. on identical lines as in Para 8.15 above. Supplier's acceptance, etc. of the performance notice and further action thereof should also be processed in the same manner as mentioned above. The text of the Performance Notice will be on similar lines to the model extension letters available at Annexure 'E' & 'F' with suitable modifications as required. First two paragraphs of a model Performance Notice is given at Annexure `H'.

8.17 Dispatch of Goods after expiry of Delivery Period

As per the contract terms, the supplier is not to supply the goods when there is no valid delivery period. In case the supplier makes any supply after expiry of delivery period, the purchaser/consignee can reject the supplies and inform the supplier accordingly; the purchaser shall also have the right to cancel the contract (w.r.t. unsupplied goods) in terms of the contract. If, however, the purchaser / consignee requires the goods (which has been supplied after expiry of the delivery period), the purchaser may accept the goods and issue a delivery extension letter

with usual LD clause and denial clauses, as mentioned earlier, to regularize the transaction.

8.18 Correspondence with the Supplier after Breach of Contract

The purchaser or its authorized representative is not to enter into correspondence after expiry of the delivery date stipulated in the contract because such a correspondence will make the contract alive. This situation will not allow the purchaser to cancel the contract straight away without first serving a performance notice to the supplier. However, even after expiry of the delivery period of the contract, the purchaser may obtain information regarding past supplies etc. from the supplier, simultaneously making it clear to the supplier that calling of such information is not intended to keep the contract alive and it does not amount to waiving the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract. A model communication which may be issued by the purchaser to ascertain the supply position etc. after expiry of the delivery period is given at Annexure 'I'.

8.19 Cancellation of Contract for Default

The purchaser may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, terminate the contract in whole or in part:

a. If the supplier fails to deliver any or all of the stores within the time period(s) specified in the contract, or any extension thereof granted by the Purchaser; or
b. If the supplier fails to perform any other obligation under the contract within the period specified in the contract or any extension thereof granted by the purchaser.

In the event the purchaser terminates the contract in whole or in part; the purchaser may take recourse to any one or more of the following action.

(a) The Security Deposit is to be forfeited;
(b) The purchaser may procure, upon such terms and in such manner as it deems appropriate, stores similar to those undelivered, and the supplier shall be liable for all available actions against it in terms of the contract.
(c) However, the supplier shall continue to perform the contract to the extent not terminated.

Before cancelling the contract and taking further action, it may be desirable to obtain legal advice from the Legal Wing of the Ministry/Department or from the Ministry of Law.

8.20 Termination of Contract for insolvency

If the supplier becomes bankrupt or otherwise insolvent, the purchaser may, at any time, terminate the contract, by giving written notice to the supplier, without compensation to the supplier provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

8.21 Termination of Contract for Convenience

After placement of contract, there may be some unforeseen situation compelling the purchaser to cancel the contract. In such a case, the purchaser is to send a suitable notice to the supplier for cancellation of the contract, in whole or in part, for its (purchaser's) convenience, inter alia, indicating the date with effect from which the termination is to become effective. Depending on the merits of the case, the purchase organization may have to suitably compensate the supplier on mutually agreed terms for terminating the contract. Suitable provisions to this effect are to be incorporated in the tender document as well as in the resultant contract.

CHAPTER – 9

ELEMENTS OF PRICE AND TERMS OF PAYMENT

9.1 Introduction

The elements of price included in the quotation of a tenderer depend on the nature of the goods to be supplied and the allied services to be performed, location of the supplier, location of the user, terms of delivery, extant rules and regulations about taxes, duties, etc. of the seller's country and the buyer's country.

In case of indigenous goods, the main elements of price are raw material price, production cost, overhead, packing & forwarding charges, margin of profit, transit insurance, excise duty and other taxes and duties as applicable.

In case of imported goods, in addition to similar elements of price as above (other than excise duty and taxes), there may be elements of custom duty, import duty, landing and clearing charges and commission to Indian agents.

Further, depending on the nature of the goods (whether domestic or imported), there may be cost elements towards installation & commissioning, operator's training etc.

It is, therefore, necessary that, to enable the tenderers to frame their quotations properly in a meaningful manner, the tender documents should clearly specify the desired terms of delivery and, also the duties and responsibilities to be performed by the supplier in addition to supply of goods.

Where the price has several components like price of the goods, costs for installation & commission, operators' training etc. the tenderers should be asked to furnish the cost break-up indicating the applicable prices for each such component (as specified and desired in the tender enquiry document) along with the overall price.

9.2 Currency

The tender documents are to specify the currency (currencies) in which the tenders are to be priced. As a general rule, domestic tenderers are to quote and accept their payment in Indian currency; Indian agents of foreign suppliers are to receive their agency commission in Indian currency; costs of imported goods, which are directly imported against the contract, may be quoted in foreign currency (currencies) and paid accordingly in that currency; and the portion of the allied work and services, which are to be undertaken in India (like installation & commissioning of equipment) are to be quoted and paid in Indian currency.

9.3 Firm Price vis-à-vis Variable Price

9.3.1 As already mentioned vide para 3.18 (viii) of Chapter 3, for short term contracts where delivery period does not extend beyond 18 months, contract should be concluded with firm and fixed price by inviting tenders accordingly.

Where it is decided to conclude the contract with variable price, an appropriate clause incorporating, inter alia, suitable price variation formula should also be provided in the tender enquiry documents. In the price variation clause, the price agreed upon should specify the base level viz, the month and year to which the price is linked, to enable variations being calculated with reference to the price levels prevailing in that month and year. A formula for calculation of price variation that has taken place between the base level and the scheduled delivery date is to be included in the price variation clause. The variations are to be calculated by using indices published by Governments/ Chamber of Commerce periodically. Suitable weights are to be assigned to the applicable elements viz. fixed overheads & profits, material and labour in the price variation formula. If the production of the goods needs more than one raw material, then the input cost of material may be further sub-divided for different categories of material, for which cost indices are published. The price variation formula is also to stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible (e.g., where the resultant increase is lower than, say, 2% of the contract price, no price adjustment will be made in favour of the supplier).

9.3.2 Exchange Rate Variation (ERV)

In case of a contract involving substantial import content(s) and having a long delivery period (exceeding one year from the date of contract), an appropriate Foreign Exchange Variation clause may be formulated by the Purchase Organization in consultation with its Finance Wing, as needed, and incorporated in the Tender Enquiry Document. In that clause, the tenderers are to be asked to indicate import content(s) and the currency used for calculating the value of import content(s) in their total quoted price, which (i.e. the total quoted price) will be in Indian Rupees. The tenderers may be asked to indicate the Base Exchange Rate for each such foreign currency used for converting the FE content into Indian

Rupees and the extent of foreign exchange rate variation risk they are willing to bear.

To work out the variation due to changes (if any) in the exchange rate(s), the base date for this purpose will be the due date of opening of tenders/seven days prior to the due date of opening of tenders …….. (the purchase organization is to decide and adopt a particular suitable date). The variation may be allowed between the above base date and the date of remittance to the foreign principal/mid-point of manufacture of the foreign component/….. (the purchase organization is to choose the appropriate date). The applicable exchange rates as above will be according to the TT Selling Rates of Exchange as quoted by authorized Exchange Bankers approved by the Reserve Bank of India on the dates in question. No variation in price in this regard will be allowed if the variation in the rate of exchange remains within the limit of plus/minus ……. percent. (The purchase organization is to decide the figure). Any increase or decrease in the Customs Duty by reason of the variation in the rate of exchange in terms of the contract will be to the buyer's account. In case Delivery period is refixed/ extended, ERV will not be admissible, if this is due to default of the supplier. The purchase organization may formulate an appropriate ERV clause on similar lines as above in consultation with their Finance Wing." The following documents should be furnished by the supplier for claiming ERV:

(a) A bill of ERV claim enclosing working sheet
(b) Banker's Certificate/debit advice detailing F.E. paid, date of remittance and exchange rate
(c) Copies of import order placed on supplier
(d) Invoice of supplier for the relevant import order

9.4 Duties and Taxes on Domestic Goods

The duties and taxes including excise duty and VAT levied by the Government on domestic goods vary from product to product. As a general policy, the statutory variations in such duties & taxes are to be allowed during the period from the date of tender to the date of acceptance of the tender (i.e. placement of contract) and during the original/ re-fixed delivery period of the contract so that both the supplier and purchaser are equally compensated for rise or fall in the prices of the goods on account of such statutory variations.

(Note: Re-fixed delivery period means the fresh delivery period which is arrived at by recasting the original contractual delivery period after taking care of the lost period, for which the supplier was not responsible. Para 8.11 of chapter 8 refers in this connection.)

In the tender enquiry conditions, the tenderers, wherever applicable, should be asked to specifically state in their offer whether they intend to ask for the duties and taxes as extra over and above the prices being quoted. In the absence of any indication to this effect by the tenderers, it is to be assumed that the prices quoted include these elements and no claim for the same will be entertained after opening

of tenders and during the currency of the resultant contract. However, where the tenderer in its quotation mentions that the prices are exclusive of statutory duties & taxes and the same will be payable extra, this condition should be incorporated in the resultant contract in clear terms.

Sometimes, the tenderer, in its tender mentions that its quotation includes current rates of taxes and duties as applicable and statutory variations, if any at the time of supply will be applicable. This condition may be acceptable.

However, correctness of the taxes and duties quoted by a tenderer as applicable during that period is to be verified while considering its tender. Also, only statutory variations, and not any other type of variations are allowed. Note: Sales tax is not livable on transactions of sale in the course of import. Categories of cases constituting sale in course of Import are:

a) Where the movement of goods from the foreign country to India is occasioned directly as a result of the sale.
b) Where there is a privity of contract between the foreign supplier and the purchase organization.
c) Where the Indian supplier acts as the agent of the foreign manufacturer in the agreement of the sale.

9.5 Octroi and Local Taxes

The goods supplied against contracts placed by Govt. are generally exempted from levy of Town Duty, Octroi Duty, Terminal Tax and other Levies of local bodies. The suppliers should be informed accordingly by incorporating suitable instructions in the tender enquiry document and in the resultant contract. Wherever required, the suppliers should obtain the exemption certificate from the purchasing officer to avoid payment of such levies and taxes. In case, where the municipality or the other local bodies insist upon such payments (in spite of exemption certificate), the supplier should make the payment to avoid delay in supplies and forward the receipt of the same for reimbursement and, also, for further necessary action.

9.6 Custom Duty on Imported Goods

In respect of imported goods, the tenderers shall also specify separately the total amount of custom duty included in the quoted price. The tenderers should also indicate correctly the rate of custom duty applicable for the goods in question and the corresponding Indian Customs Tariff Number. Where customs duty is payable, the contract should clearly stipulate the quantum of duty payable etc. in unambiguous terms. The standard clauses to be utilized for this purpose are to be incorporated in the tender enquiry documents.

The Government has allowed exemption from payment of customs duty in respect of certain types of goods for use as Hospital equipment imported by Government Hospitals and Research Institutes.

However, to avail of such exemptions, the purchasing officer is required to produce "Custom Duty Exemption" certificate and "Not Manufactured in India" certificate at the appropriate time.

The relevant contemporary instructions covering these aspects should be incorporated in the tender enquiry document and in the resultant contract.

9.7 Duties/Taxes on Raw Materials

The purchaser is not liable to any claim from the supplier on account of fresh imposition and/or increase (including statutory increase) of excise duty, custom duty, sales tax etc. on raw materials and/or components used directly in the manufacture of the contracted goods taking place during the pendency of the contract, unless such liability is specifically agreed to in terms of the contract.

9.8 Terms of Payment for Domestic Goods

Where the terms of delivery is FOR Dispatching Station, the payment terms, depending on the value and nature of the goods, mode of transportation etc. may be – 60% to 90% on proof of dispatch and other related documents and balance on receipt at site and acceptance by the consignee.

Where the terms of delivery is CIP destination/delivery at site/FOR destination, usual payment term is 100% on receipt and acceptance of goods by the consignee and on production of all required documents by the supplier.

Where goods to be supplied also need installation and commissioning by the supplier, the payment terms are generally as under:

i) For a contract with terms of delivery as FOR dispatching station – 60% on proof of dispatch along with other specified documents, 30% on receipt of the goods at site by the consignee and balance 10% on successful installation and commissioning and acceptance by the consignee.

ii) For a contract with terms of delivery as CIP destination/Delivery at site/FOR destination – 90% on receipt and acceptance of goods by the consignee at destination and on production of all required documents by the supplier and balance 10% on successful installation and commissioning and acceptance by the consignee.

NB: Generally (specially for goods requiring installation and commissioning at site by the supplier), the desirable terms of delivery are CIP destination or Delivery at site, so that the supplier remains responsible for safe arrival of the ordered goods at the site. Therefore, unless otherwise decided Ex-works or FOR Dispatching station terms should be avoided.

9.9 Terms of Payment for Imported Goods

9.9.1 Cases where Installation, Erection and Commissioning (if applicable) are not the responsibility of the Supplier – 100 % net FOB/FAS price is to be paid against

invoice, shipping documents, inspection certificate (where applicable), manufacturers' test certificate, etc.

9.9.2 Cases where Installation, Erection and Commissioning are the responsibility of the Supplier – 80% - 90% net FOB/FAS price will be paid against invoice, inspection certificate (where applicable), shipping documents etc. and balance within 21 - 30 days of successful installation and commissioning at the consignee's premises and acceptance by the consignee.

9.9.3 Payment of Agency Commission against FOB/FAS Contract – Entire 100% agency commission is generally paid after all other payments have been made to the supplier in terms of the contract.

9.10 Payment of Air Freight Charges

Goods that are required to be air lifted are to be despatched through Air India/Indian Airlines only on a `Charge forward basis'. All air freight charges, which are shown on the relevant consignment note as chargeable to the consignee, are to be paid to Air India/Indian Airlines in Rupees.

9.11 Advance Payment to Supplier

Ordinarily, payments for supplies made or services rendered should be released to the supplier only after the supplies have been made or services have been rendered. However, if it may become necessary to make advance payments in the following types of cases: -

(i) Advance payment demanded by firms holding maintenance contracts for servicing of Air-conditioners, computers, other costly equipment, etc.

(ii) Advance payment demanded by firms against fabrication contracts, turn-key contracts etc.

(iii) Advance payment for supply of stationary.

The provisions laid down in Delegation of Power may be followed in such cases advance payments should not exceed the following limits:

i) Forty per cent of the contract value to a State or Central Government agency or a Public Sector Undertaking;

ii) In case of maintenance contract, the amount should not exceed the amount payable for six months under the contract.

While making any such advance payment, adequate safeguards in the form of bank guarantee etc. should be obtained from the supplier. Further, such advance payments should be generally interest bearing, suitable percentages for which are to be decided on case to case basis.

9.12 Documents for Payment

The documents, which are needed from the supplier for release of payment, are to be clearly specified in the contract. The paying authority is also to verify the documents received from the supplier with corresponding stipulations made in the contract before releasing payment. The important documents, which the supplier is to furnish while claiming payment, are:

a. Original Invoice
b. Packing List
c. Certificate of country of origin of the goods to be given by the seller or a recognized Chamber of Commerce or other agency designated by the local Government for this purpose.
d. Certificate of pre-dispatch inspection by purchaser's representative
e. Manufacturer's test certificate
f. Certificate of Insurance
g. Bill of lading/Airway bill/Rail receipt or any other despatch document, issued by a government agency (like the Department of Posts) or an agency duly authorized by the concerned Ministry/Department.
h. Product is new, un-used and also meets the other relevant contractual requirements.

While claiming payment, the supplier is also to certify in the bill that the payment being claimed is strictly in terms of the contract and all the obligations on the part of the supplier for claiming this payment has been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice etc. for claiming the payment.

9.13 Modes of Payment

9.13.1 Payment to Domestic Suppliers

Payments to domestic suppliers are usually made by cheque drawn on the State Bank of India transacting ESIC business. if domestic suppliers, especially against high value contracts for sophisticated equipment/machinery, desire payment through Letter of Credit, the same, depending on the merits of the case may be agreed to.

9.13.2 Payment to Foreign Suppliers

Payment to foreign suppliers are ordinarily made by Letters of Credit (LC) opened by the State Bank of India or any other scheduled/authorized Bank as decided by the purchasing officer. While opening the Letters of Credit, the purchasing officer should follow the provision of Uniform Customs and Practices for Documentary Credit (UCPDC). If Letter of Credit is not opened, payment can also be made to the seller through Direct Bank Transfer for which buyer has to ensure that payment is released only after the receipt of prescribed documents.

9.13.3 Payment by Letter of Credit

Two banks are involved for payment to the supplier by Letter of Credit – purchaser's bank and supplier's bank. The purchaser is to forward the request to its bank in the prescribed format as formulated by State Bank of India, along with all relevant details including authenticated copy of the contract. Based on the same, the purchaser's bank opens letter of credit on behalf of the purchaser for transacting payment to the supplier through the supplier's bank.

Care should be taken to ensure that the payment terms and the documents to be produced for receiving payments through letter of credit are identical with those shown in the contract. Generally, irrevocable letter of credit is opened so that the supplier is fully assured of its payment on fulfilling its obligations in terms of the contract. In case, the delivery date of the contract is extended to take care of delay in supply, for which supplier is responsible, the tenure of the letter of credit is also to be extended, but the expense incurred for such extension (of letter of credit) is to be borne by the supplier.

9.14 Deduction of Income Tax, Service Tax, etc. at Source from Payments to Suppliers

This will be done as per the existing law in force during the currency of the contract.

9.15 Recovery of Public Money from Supplier's Bill

Sometimes, requests are received from a different Department for withholding some payment of a supplier out of the payment due to it against a contract. Such requests are to be examined by the Department (which has received the request) on the merits of the case for further action. It will however, be the responsibility of the Department asking for withholding of payment to defend the Corporation against any legal procedure arising out of such withholding as also for payment of any interest thereof.

9.16 Refund from Supplier

Sometimes, the suppliers, after claiming and receiving reimbursements for sales tax, excise duty, custom duty etc. from the purchaser, applies to the concerned authorities for refunds, on genuine grounds, of certain portions of such duties and taxes paid by it and receives the allowable refunds. Such refunds contain the purchaser's share also (out of the payments already made by the purchaser to that supplier). The tender enquiry document and the contract are to contain suitable provisions for obtaining such refunds from the supplier.

9.17 Payment against Time Barred Claims

Ordinarily, all claims against Corporation are time barred after a period of one year calculated from the date when the payment falls due unless the payment claim preferred has been under correspondence. However, limitation is saved if there is an admission of liability to pay, and fresh period of limitation starts from the time such admission is made. The drill to be followed while dealing with time barred claims will be decided by the Head of Office / Hqrs. Office in consultation with the Paying Authority. The Paying Authority is to ensure that no payment against such time barred claim is made till a decision has been taken in this regard by the competent authority.

CHAPTER – 10

QUALITY CONTROL AND INSPECTION OF ORDERED GOODS

10.1 Introduction

Before accepting the ordered goods, it must be ensured that the goods have been manufactured as per the required specifications and are capable of performing the functions as specified in the contract. To achieve the same, the tender document and the subsequent contract should specify the details of inspection and tests to be carried and stages and manner for carrying out the same. The details of the Inspecting Officer(s) are also to be incorporated in those documents.

The required inspections and tests should be carried out by the technically qualified and competent personnel. If the purchasing Department does not have such qualified personnel, it may engage competent professionals from outside agencies.

10.2 Stages and Modes of Inspection

The stages and modes of inspection will depend on the nature of the goods, total value of the contract, location of the supplier, location of the user, etc. Usually, following types of inspection are adopted:

i) Pre-dispatch Inspection: This type of inspection is conducted during the manufacturing process (which is known as Stage Inspection)

and on the finished products before despatch of the goods from supplier's premises.

ii) Inspection of goods on receipt at consignee's / user's site: Such inspection is done on receipt of goods at site before accepting the same).

iii) Inspection after Installation & Commissioning of the equipment at site: This method is adopted to check the performance and output of the equipment / machinery after the same is commissioned at site.

10.3 Inspection Procedure

10.3.1 The inspection procedure will be as per the provisions contained in the contract.

10.3.2 After satisfactory inspection and tests, the acceptable goods shall be stamped, labeled, marked or sealed, according to the circumstances in such a way as to make subsequent identification of accepted lots easy for the consignee/user. For goods, not meeting the contract requirements the rejection Inspection Notes shall be issued immediately. A time limit shall be fixed for issue of Inspection documents. Facsimile of the Inspection stamps and their position should be put on the Inspection Notes to help identifying the inspected goods at the consignee's end.

10.3.3 The paying authorities should invariably keep a record of specimen signature of authorized Inspecting Authorities for verifying the same with the signature in the Inspection Note while authorizing payment.

10.4 Inspection Document

Inspection Notes in the form prescribed by the Corporation shall be issued in significance of the acceptance of the goods. Inspection Note should have provision for entering consignee's receipt certificate (confirming receipt of goods) on it. Consignee's receipt certificate portion of the Inspection Notes shall be filled by the consignee after receipt of the goods, verification of quantity and inspection marks on the accepted goods and taking the supplies in its stocks, signifying its (i.e. consignee's) acceptance.

Inspection Note shall also indicate the validity period, by which period the supplier must despatch the accepted goods to the consignee in terms of the contract. The number of copies of the Inspection Notes and their distribution for different types of inspections will be as prescribed by the Corporation. Each Inspection Note issued shall invariably bear the name, stamp with designation and code No. of the officer authorized to sign and issue Inspection Documents.

10.5 Outside Testing Laboratories

Sometimes it becomes necessary to conduct type test, acceptance test or special test at outside laboratories, when facilities for these tests are not available in-house with the supplier or carrying out of confirmatory tests is considered desirable before accepting the goods. The purchasing officer should draw up a list of approved laboratories for this purpose, to which the samples drawn from the lots offered by the supplier can be sent for tests. The list should also contain approved laboratories, which can be used as referral/appellate laboratories for retest, when samples tested at one laboratory are decided to be re-tested.

The Store Manager shall lay down a Liability Statement for cost of samples expended in tests, dispatch of samples, transportation costs, test charges etc. in respect of samples tested at outside laboratories as applicable in various situations.

In cases where the samples are to be tested at supplier's cost on account of non-availability of their own testing arrangements, the responsibility of depositing the testing fee, etc. would rest with the supplier.

10.6 Samples

When a contract is concluded on the basis of approved sample the same shall bear seals and signatures of the approving authority (ies) as appropriate. Various types of samples like Standard Sample, Tender Sample, Advance Sample, Bulk Supply Sample, Complaint Sample, Quality, Audit Sample, Reference Sample etc. may be encountered during the procurement process. All such samples shall be drawn, retained, classified and disposed in accordance with the instructions issued by the Hqrs. Office. A Register of
Samples shall be maintained. An officer shall be made the in-charge of the Sample Room and will be responsible for all activities in the Sample Room. There shall be a system of physical verification of samples, which shall be done at prescribed intervals and certificates to this effect shall be recorded in the Sample Register. Samples, which have completed the retention period and no longer required, shall be set aside for public auction periodically.

10.7 Handling of Inspection Stamps/Inspection Documents

Each Inspecting Officer shall be supplied with Acceptance stamps, Lead Seals, Pliers, Rubber Stamps, Stencils, Labels, Stickers, Holograms etc. according to the requirements, for sealing and marking the inspected goods in terms of the contract. He will be responsible for safe keeping of these articles and shall ensure that they are not misused by unauthorized persons. Unserviceable Seals, Pliers, Stamps, stickers, Holograms etc. shall be returned to the concerned issuing official.

10.8 Custody of Inspection Notes

For reasons of security and to avoid irregular or incorrect issue, the
Inspection Notes should be machine numbered and wherever possible different colour copies marked for each user. An account of the Inspection Notes issued

with serial number wise details shall be maintained in an appropriate register. A proper system should develop to avoid any fraudulent and unauthorized use of the inspection notes.

10.9 Inspection of goods tendered at the Fag End or on the Last Date of the Contract Delivery period As far as possible, the inspection should be commenced and finished and Inspection Notes issued during the validity period of the contract so that the contract is not kept alive after expiry of delivery period.

In cases where the supplier offers stores for inspection during the last few days of the contract delivery period or even on the last day of the contract delivery period, efforts should be made by the Inspecting Officer to commence the inspection before the expiry of the delivery period.

In cases where it is not possible to commence/conclude the inspection before the expiry of the delivery period, the Inspecting Officer should immediately on receipt of the intimation or request for inspection of the stores, bring to the notice of the supplier orally as well as in writing that the stores have been submitted for inspection at the very late stage and that it is not possible to commence/conclude the inspection before the expiry of the delivery period.

The supplier should also be informed that the goods offered for inspection will, however, be inspected till the completion of the inspection which can be after the expiry of the delivery period and such an inspection continuing after the expiry of the delivery period is neither intended nor is to be construed as keeping the contract alive.

The Inspecting Officer should invariably issue such notice to avoid the contract being kept alive after the expiry of the delivery period. In a case, where the inspection is commenced before the expiry of the delivery period and the Inspection Note is issued after the expiry of the delivery period, the Inspection Note, whether accepting or rejecting the goods, shall be duly franked as per the standard franking clause as given below as an abundant precaution against keeping the contract alive: -

a) Franking Clause to be adopted in the case of Acceptance of Goods
   "The fact that the goods have been inspected after the delivery period and passed by the Inspecting Officer will not have the effect of keeping the contract alive. The goods are being passed without prejudice to the rights of the purchaser under the terms and conditions of the contract".
b) Franking Clause in the case of Rejection of Goods
   "The fact that the goods have been inspected after the delivery period and rejected by the Inspecting Officer will not bind the purchase in any manner. The goods are being rejected without prejudice to the rights of the purchaser under the terms and conditions of the contract."

10.10 Acceptance of Goods against Supplier's In-house Inspection Report and Warranty

In case of goods to be imported from abroad, pre-dispatch inspection of goods at supplier's premises involves considerable expenditure to the purchaser. In such a situation, the purchaser may substitute pre-dispatch inspection by its own inspector with manufacturer's in-house inspection report and warranty. However, before adopting this procedure, the nature and cost of the goods ordered, the reputation of the supplier, etc. should also be kept in view and appropriate decision taken.

For checking the reputation and background of the supplier, the purchase organization may also request the Indian Embassy located in that country for a report on the technical and financial competence of the firm.

Further, trustworthy publications like 'Thomas Register', 'Dun and Brad Street Register', etc. are also available in USA and Europe which provide authentic technical & financial data and details of the manufacturing companies located in those countries. Such publications may also be relied upon for this purpose.

10.11 Purchaser's Right of Rejection

Purchaser has the right to reject the goods on receipt at site during final inspection though the goods have already been inspected and cleared at pre-dispatch stage by the purchaser's inspector. However, such rejection should be strictly within the contractual terms & conditions and no new condition should be adopted while rejecting the goods during final inspection.

10.12 Acceptance of Goods vis-à-vis Warranty Provisions

Goods accepted by the purchaser at initial inspection and in final inspection in terms of the contract shall in no way dilute purchaser's right to reject the same later, if found deficient in terms of the warranty clause of the contract.

10.13 Joint Investigation against Complaints relating to Quality of Goods

In case a written complaint is received from the supplier disputing rejection of goods by the purchaser's inspecting officer, the same should be jointly investigated by a team consisting of an authorized representative of the purchase organization, a senior representative of the inspecting agency, who is well conversant with the goods and an authorized representative of the supplier. Detailed procedure to be followed in this regard and the format of the joint inspection report (to be signed by all the team members) are to be prescribed by the purchasing officer and the matter processed accordingly for further necessary action.

CHAPTER – 11

EVALUATION OF TENDERS, FORMULATION OF PURCHASE PROPOSAL AND PLACEMENT OF CONTRACT

11.1 Introduction

Evaluation of tenders is one of the most significant areas of Purchase Management. The entire process of tender evaluation and placement of contract must be transparent. All the aspects, which are to be taken into account for evaluating the tenders including the method to be adopted for evaluation of tenders and the techniques for determining the lowest evaluated responsive tender for placement of contract are to be incorporated in the tender enquiry document in clear and comprehensive manner without any ambiguity and/or confusing stipulations therein, so that the interested tenderers can formulate their competitive offers in a meaningful manner and participate in the tendering process with confidence.

The Purchase Officer should prepare a comparative statement of quotations received in the order in which tenders were opened. This statement will have information about specifications of the material offered by the tenderer, rates quoted (including taxes or otherwise), discount, if any, delivery schedule, earnest money deposit, validity of the offer, payment schedule etc. this action should be taken before preliminary examination of the tenders. The comparative statement so prepared should be signed by the concerned officers. All the tenders are to be evaluated strictly on the basis of the terms & conditions incorporated in the tender enquiry document (based on which offers have been received) and the terms, conditions etc. stipulated by the tenderers in their tenders. No new condition should be brought in while evaluating the tenders. Similarly, no tender enquiry condition (specially the significant/essential ones) should be over looked while evaluating the tenders. Aim should be to ensure that no tenderer gets undue advantage at the cost of other tenderers and/or at the cost of the purchaser.

11.2 Preliminary Examination

The purchase officer nominated for handling the tenders for initial scrutiny etc. will receive the tenders along with other documents from the tender opening officials in a manner as described under para 6.22 of Chapter
6. In this context, it should be ensured that no tender is rejected by the tender opening officials at the tender opening stage; they are to open all the tenders as received and send them to the purchase officer as prescribed above.

11.2.1 All the tenders so received will first be scrutinized to see whether the tenders meet the basic requirements as incorporated in the tender enquiry document. The tenders, who do not the meet the basic requirements, are to be treated as unresponsive and ignored.

The following are the important points, for which a tender may be declared as unresponsive and to be ignored, during the initial scrutiny:

i) The tender is unsigned.
ii) The tenderer is not eligible.
(Example: The tender enquiry condition says that the bidder has to be a registered SSI unit; but the tenderer is a, say, Large Scale Unit).
iii) The tender validity is shorter than the required period.
iv) Required EMD has not been provided.
v) The tenderer has quoted for goods manufactured by a different firm without the required authority letter from the proposed manufacturer.
vi) Tenderer has not agreed to give the required performance security.
vii) The goods quoted are sub-standard, not meeting the required specification etc.
viii) Against a schedule in the List of Requirement (incorporated in the tender enquiry), the tenderer has not quoted for the entire requirement as specified in that schedule.

(Example: In a schedule, it has been stipulated that the tenderer will supply the equipment, install and commission it and also train the purchaser's operators for operating the equipment. The tenderer has however, quoted only for supply of the equipment).

ix) (ix) The tenderer has not agreed to some essential condition(s) incorporated in the tender enquiry.
(Example: Some such important essential conditions are – terms of payment, liquidated damages clause, warranty clause, dispute resolution mechanism, applicable law and any other important condition having significant bearing on the cost/utility/performance of the required goods, etc.

11.2.2 During the above preliminary examination, the purchaser may also find some minor informality and/or irregularity and/or non-conformity in some tenders. The purchaser may waive the same provided the same does not constitute any material deviation and financial impact and, also, does not prejudice or affect the ranking order of the tenderers. Wherever necessary, the purchaser is to convey his observation on such 'minor' issues (as mentioned above) to the tenderer by registered letter/speed post etc. asking the tenderer to respond by a specified date also mentioning therein that, if the tenderer does not confirm the purchaser's view or does not respond at all by that specified date, its tender will be liable to be ignored. Depending on the outcome, such tenders are to be ignored or considered further.

(Example: A tender enquiry stipulates, as an essential condition, that the tenderer, along with its quotation, must also submit a certified copy of its latest income tax clearance certificate (ITCC). If a tenderer does not provide this document, the purchaser may ask for it with target date as above. If, the tenderer does not respond by that target date, its offer will be liable to be ignored).

11.2.3 Non-conformities between the figures and words of the Quoted

Prices – Sometimes, non-conformities/errors are also observed between the quoted prices in figures and that in words. The same is to be taken care of as indicated below:

(a) If, in the price structure quoted for the required goods, there is discrepancy between the unit price and the total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly, unless in the opinion of the purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price corrected accordingly.

(b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

(c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

If there is such discrepancy in an offer, the same is to be conveyed to the tenderer with target date on the above lines and if the tenderer does not agree to the observation of the purchaser, the tender is liable to be ignored.

11.2.4 Discrepancies between original and additional copies of a Tender -
Sometimes discrepancies are also observed between the original copy and the other copies of the same tender set. In such a case, the text etc. of the original copy will prevail. Here also, this issue is to be taken up with the tenderer in the same manner as above and subsequent actions taken accordingly.
11.2.5 All the actions mentioned in paragraphs 11.2 to 11.2.4 should have the approval of the competent authority at appropriate stages.

11.2.6 Details of all the tenderers, which have been declared unresponsive and to be ignored as per above analysis and, also, the grounds for their becoming unresponsive are to be accurately recorded in the purchase file.

11.3 Qualification Criteria

After completing the stage as per Para 11.2.6 above, it is to be examined whether the remaining tenderers (i.e. other than the unresponsive tenderers) meet the required qualification criteria incorporated in the tender enquiry document. The tenderers, which do not meet the required qualification criteria, are to be declared unresponsive and not to be considered further. Details of such tenderers, which do not meet the required qualification criteria, are also to be recorded in the purchase file along with the grounds for their becoming unresponsive.

(Example: The qualification criteria incorporated in the tender enquiry document stipulates, inter alia, that the tenderer should have successfully manufactured and supplied 150 pieces of the required goods during the last one year from the date of tender opening. A tender during the initial scrutiny is found to be responsive; however, thereafter, while scrutinizing the data furnished by it w.r.t. qualification criteria, it is observed that they had manufactured and supplied only, say, 100 pieces of the required item during the last one year. This tender will, therefore, become unresponsive).

Note: However, in case of Two Bid System (as described under para 6.24 of Chapter 6), the technical acceptability of the offers are first determined and, thereafter, the financial bids of only the technically acceptable offers are opened for further scrutiny and processing for placement of contract.

11.4 Scrutiny of Responsive Tenders

The responsive tenders (i.e. after ignoring all the unresponsive tenderers as above) are to be evaluated and ranked as per the procedure indicated in subsequent paragraphs.

However, when the required goods are simple in nature and have standard specifications, initial scrutiny as well as scrutiny for qualification criteria may be done simultaneously in one go.

In case the required goods are of sophisticated nature and comparatively costly, then in the first stage the initial scrutiny will be done to segregate the unresponsive tenders as per paras 11.2.1 to 11.2.6 above. Thereafter, all the remaining tenders are to be evaluated and ranked. The next step will be to check fulfillment of required qualification criteria by the tenderers so ranked, starting from the lowest evaluated tender (L1). If L1 meets the required qualification criteria, that tender is to be selected for placement of contract. But if it does not meet the required criteria then similar determination is to be done for the next lowest evaluated tender (L2) and so on till reaching the tender who meets the required qualification criteria. By adopting this procedure, the purchase organization will save time by not checking the qualification aspects of all the responsive offers, simultaneously in one go.

11.4.1 The ultimate aim for evaluation of tenders is locating the lowest evaluated responsive tender for placement of contract. Depending on the nature of the goods and the value thereof, the purchasing officer is to decide the appropriate procedure (out of the procedures mentioned above) to be followed for identifying the lowest evaluated responsive tender, which meets all the requirements including the qualification criteria in terms of the tender enquiry conditions for placement of contract.

11.5 Conversion of Currencies

If offers have been received containing different currencies (as in the case of purchasing imported goods), all the quoted prices (with different currencies) are to be converted into a single currency for evaluation and comparison of offers on equitable basis. For this purpose, all such quoted prices are to be converted into Indian rupees, as per the selling exchange rates established by a competent authority (like RBI/SBI) as prevailing on a particular date to be specified in the tender enquiry. Generally, this date is the date of tender opening.

11.6 Evaluation and Ranking

11.6.1 Depending on the terms of delivery and the projected requirement, all the applicable components of the costs, as quoted in the responsive tenders, are to be added to work out the ultimate evaluated costs of the tenders. The evaluation is also to include applicable taxes, duties etc. in the tender prices.

Further, if the tender enquiry document provides for any price preference and/or purchase preference for SSI/PSU etc. (as mentioned in Chapter 2), the same is also to be kept in view while evaluating such tenders.

11.6.2 Sometimes, while purchasing sophisticated and costly equipment, machinery, etc. the purchase organization also gives special importance to factors like high quality performance, environmental friendly features, low running cost, low maintenance cost, etc. To take care of the same, relevant details are to be incorporated in the tender enquiry document and the criteria adopted to assess the benefit of such features while evaluating the offers are also to be clearly stipulated in the tender enquiry document so that the tenderers are aware of the same and quote accordingly. While evaluating such offers, these aspects are also to be taken into account.

Such details, whenever considered necessary, should be evolved by competent technical authority for incorporation in the tender document, so that there is no ambiguity and/or vagueness in the same.

11.6.3 After completing the entire evaluation process for the responsive tenders on equitable basis as above, they are to be entered into a ranking statement in ascending order of the evaluated prices (like L1, L2, L3…etc) along with other relevant details, so that a clear picture of their standing as well as comparative financial impact is available at a glance.

11.6.4 If the schedule of requirements contains more than one schedule, then offers for each schedule are to be evaluated and ranked separately in a self contained manner on above lines. In case a tenderer offers special discount if more than one schedule is ordered on it (and if the same is permissible as per terms of the tender enquiry document), the same should also be taken note of in the ranking statement.

11.7 Reasonableness of Price

11.7.1 Before placing the contract on the lowest evaluated responsive tender (L1), the purchase organization is to ensure that the price to be paid is reasonable.

11.7.2 The broad guidelines for judging the reasonableness of price are as under:

(i) Last purchase price of same (or, in its absence, similar) goods
(ii) current market price of same (or, in its absence, similar) goods
(iii) Price of raw materials, which go into the production of the goods
(iv) Receipt of competitive offers from different sources
(v) Quantity involved
(vi) Terms of delivery
(vii) Period of delivery

(viii) Cost analysis (material cost, production cost, over-heads, profit margin)

NB: Price paid in an emergency purchase or purchase price of goods offered by a firm through 'distress sale' (i.e. when the firm clears its excess stock at throw away prices to avoid further inventory carrying cost etc.) are not accurate guidelines for future use.

11.7.3 Price not Reasonable – If L1's price is not reasonable, then, in the first place, the purchase department is to review its own data & details to recheck whether the reasonable price so arrived is correct or not. If it is correct, the purchase department may, strictly as an exception, negotiate the price only with the lowest evaluated responsive tender (L1) in an attempt to bring down the same.

If L1 reduces the price to the desired level, contract may be placed on it but if it does not agree, then further action like re-tendering etc. may be decided by the purchase department depending on the merits of the case.

11.7.4 Lack of Competition – Sometimes the purchase department may not receive sufficient number of tenders. A situation may also arise where, after analyzing the tenders, the purchase department ends up with one responsive tenderer. In such situations, the purchase department is first to check whether, while floating/issuing the tender enquiry, all necessary requirements like standard tender enquiry conditions, industry friendly specification, wide publicity, sufficient time for formulation of tenders, etc. were fulfilled. If not, the tender is to be re-issued/re-floated after rectifying the deficiencies. However, if after scrutiny it is found that all such aspects were fully taken care of and in spite of that the purchaser ends up with one responsive tender only, then contract may be placed on that tenderer provided the quoted price is reasonable.

11.7.5 Dividing the Quantity

As per standard procedure, each schedule of requirement incorporated in the tender enquiry document is to be covered on the lowest responsive tenderer for that schedule without dividing the same. The tenderer who does not quote for the complete schedule as required is normally to be treated as unresponsive and ignored. However, there may be special occasions of purchase of very large quantities of goods which are beyond the capacity of a single tenderer and the lowest responsive tenderer is unable to take the load of the entire quantity. In such cases, the remaining quantity may be ordered on the second lowest responsive tenderer (L2) at the rates offered by the lowest responsive tenders (L1), as far as feasible and for this purpose negotiation may be held with the above tenderer (viz. L2). In such cases, it may also become necessary to divide the requirement under a schedule by placing multiple contracts for part quantities on more than 2 responsive tenderers. Such eventuality should normally be foreseen and provided for in the notice inviting tenders. The formula proposed to be adopted for allocation of orders to multiple (responsive) tenderers should be clearly brought

out in the notice inviting tenders. The splitting of order by purchasing department should be an exception rather than a rule.

11.8 Award of Contract

Before expiry of the tender validity period, the purchase department shall notify the successful tenderer in writing, by suitable foolproof method, that its tender (briefly indicating therein relevant details like quantity, specification of the goods ordered, prices etc.) has been accepted. In the same communication, the successful tenderer is to be instructed to furnish the required Security Deposit within a specified period (generally 21 days). Promptly after the above notification, the purchase department is also to issue the contract to the successful tenderer asking therein, inter alia, to send its unconditional acceptance of the contract within fifteen days. It should also be made known to the successful tenderer that in case, it does not furnish the required Security Deposit or does not accept the contract within the stipulated target dates, such non-compliance will constitute sufficient ground for forfeiture of its EMD and processing the case for further action against it (the successful tenderer).

11.9 Tolerance Clause

To take care of any change in the requirement during the period starting from issue of tender enquiry till placement of the contract, a plus/minus tolerance clause is incorporated in the tender document, reserving purchaser's right to increase or decrease the quantity of the required goods upto that limit without any change in the terms & conditions and prices quoted by the tenderers. While awarding the contract, the quantity ordered may be increased or decreased, if necessary, within the prescribed plus/minus tolerance limit.

The tolerance limit should be reasonable. Higher the tolerance limit, more is the uncertainty for the tenderers in formulating their prices. Therefore, higher the tolerance limit, more is the chance of loading on the prices quoted by the tenderers to take care of such uncertainties. Generally, the tolerance limit should not be more than plus/minus fifteen percent.

The practice of incorporating in the tender document a tolerance clause reserving purchaser's right to increase the ordered quantity upto a specified percentage with same terms & conditions and prices during the currency of the contract creates much more uncertainty for the tenderers due to such long stretch of time. In such cases, the tenderers tend to put much higher cushion in their quoted prices, which is not a healthy sign. Therefore, generally such tolerance clause running through the tenure of the contract should not be incorporated in the tender document.

11.10 Publication of Tender Result – The name of the successful tenderer awarded the contract should be mentioned in the notice board/bulletin/web site of the concerned office.

11.11 Return of EMD to Unsuccessful Tenderers

The EMDs of the unsuccessful tenders are to be returned to them without any interest, whatsoever as indicated under para 7.3 of Chapter 7.

11.12 Tenderer's Right to question Purchaser

A tenderer shall have the right to be heard in case it feels that proper procurement process is not being followed and/or its tender has been rejected wrongly. The tenderer is to be permitted to send its representation in writing, which is to be examined by appropriate administrative authority of the purchasing officer. But, such representation has to be sent within one month from date of placement of contract and to be replied (by the
Department) within one month from date of receipt of the representation.

However, to discourage frivolous complaints, a non-refundable fee of suitable amount (linked to the value of the purchase) should be prescribed.

11.13 Extension of Tender Validity Period

The entire process of scrutiny & evaluation of tenders, preparation of ranking statement and notification of award must be done within the original tender validity period. The validity period should not be unreasonably long as keeping the tender unconditionally valid for acceptance for longer period entails the risk of getting higher prices from the tenderers. Generally, the validity period should not be more than three months from the date of tender opening.

If however, due to some exceptional and unforeseen reasons, the purchase organization is unable to decide placement of the contract within the original validity period, it should request, before expiry of the original validity period, all the responsive tenderers to extend their tenders upto a specified period. While asking for such extension, the tenderers are also to be asked to extend their officers as it is, without any changes therein. They may also be told to extend the validity of the EMD for the corresponding additional period (which is to be specified in the request). A tenderer may not agree to such a request and this will not tantamount to forfeiture of its EMD. But the tenderers, who agree to extend the validity, are to do so without changing any terms, conditions etc. of their original tenders.

CHAPTER – 12

CONTRACT MANAGEMENT

12.1 Introduction

Contract Management involves monitoring the implementation of a contract after it is placed to ensure timely completion of all the supplies and related services shown in the contract as per terms & conditions incorporated therein.

12.2 Text of Contract

The very first requirement for ensuring a trouble free contract management is placement of contract with unambiguous and transparent terms & conditions, which have already been agreed to by both the purchaser and the supplier in black & white.

12.3 Security Deposit

The purchaser is to ensure that the supplier receiving the contract furnish the required Security Deposit in the prescribed form by the specified date, failing which necessary action including forfeiture of the Earnest Money Deposit is to be taken against the supplier.

12.4 Acknowledgement of Contract

The supplier should acknowledge and unconditionally accept the contract within the specified days from the date of issue of contract. While acknowledging the contract, the supplier may raise some issues and/or ask for some modifications against some entries in the contract; such aspects shall be immediately looked into for necessary action and, thereafter, supplier's unconditional acceptance of the contract obtained.

If both the parties (viz. the purchaser and the supplier) simultaneously sign the contract across the table, further acknowledgement from the supplier is not required.

12.5 Coordination

All the authorities, who are entrusted with some responsibilities and also to perform some duties in terms of the contract, are to work in unison in a coordinated manner to ensure completion of the contract without any time overrun, cost overrun and related legal complication. It is, therefore, necessary for the purchase organization to keep a proper watch and coordinate all such activities to avoid any bottleneck or problem in the passage of the contract.

12.6 Amendment to Contract

Many a times, due to various reasons, changes and modifications are needed even in a duly concluded contract. Requests for such changes and modifications mostly emanate from the supplier. Immediately on receiving such a request, the purchase organization shall examine the same and take action as necessary with the approval of the competent authority.

Any amendment to contract terms requested by the supplier may have, inter alia, financial impact and/or technical impact and/or legal impact. Therefore, before agreeing to the request of the supplier, the purchase organization should scrutinize the issue on its merits to ensure that the requested amendment will not have any adverse effect on the purchase organization.

Financial concurrence should be obtained before issuing any amendment having financial implications/repercussions. Further, there may be an occasion where legal advice is necessary before issuing the proposed amendment. The purchasing officer should process such issues, as deemed fit, depending on the merit of the case.

12.7 Payment to the Supplier

Purchase organization shall ensure that all the payments due to the firm including release of Security Deposit are made on priority basis without avoidable delay. An appropriate time schedule may be prescribed by the purchasing officer for this purpose to be acted upon by the concerned officials.

12.8 Monitoring of Securities and other Instruments

Proper procedure for safe custody and monitoring of bank guarantees and other instruments should be laid down by the purchasing officer and followed accordingly. Para 7.8 of Chapter 7 also refers in this connection.

12.9 Closure of Purchase File

On completion of all activities against a contract, the purchase file should be preserved in the record room and destroyed after expiry of the applicable mandatory retention period with the approval of the competent authority.

CHAPTER – 13

SETTLEMENT OF DISPUTES

13.1 General

Normally, there should not be any scope of dispute between the purchaser and the supplier after entering into a mutually agreed valid contract.

However, due to various unforeseen reasons, problems may arise during the progress of the contract leading to disagreement between the purchaser and the supplier. Therefore, the conditions governing the contract shall contain suitable provision for settlement of such disputes / differences binding on both the parties.

13.2 Mode of Settlement

Mode of settlement of such disputes/differences shall be through Arbitration. However, when a dispute/difference arises, both the purchaser and the supplier shall first try to resolve the same amicably by mutual consultation. If the parties fail to resolve the dispute by such mutual consultation within twenty-one days, then, depending on the position of the case, either the purchaser or the supplier shall give notice to the other party of its intention to commence arbitration as hereinafter provided:

i) When the contract is with domestic supplier, the applicable arbitration procedure will be as per Indian Arbitration and Conciliation Act, 1996.

ii) When the contract is with foreign supplier, the supplier has the option to choose either Indian Arbitration and Conciliation Act, 1996 or Arbitration in accordance with the provision of UNCITRAL (United Nations Commission on International Trade Law) Arbitration Rules.

13.3 Venue of Arbitration

The venue of arbitration shall generally be the place from where the contract has been issued except when foreign supplier opts for Arbitration, in accordance with the provision of UNCITRAL, Arbitration Rules, the venue can be a neutral country.

13.4 Applicable Law

The contracts shall be interpreted in accordance with the laws of the Union of India.

13.5 Legal Advice

While processing a case for arbitration, the purchase organization is to take legal advice, at appropriate stages from competent authorities and Legal Advisor.

CHAPTER – 14

RATE CONTRACT

14.1 Definition

A Rate Contract (commonly known as RC) is an agreement between the purchaser and the supplier for supply of specified goods (and allied services if any) at specified price and terms & conditions (as incorporated in the agreement) during the period covered by the Rate Contract. No quantity is mentioned nor any minimum drawl is guaranteed in the Rate Contract. The Rate Contract is in the nature of a standing offer from the supplier firm. The firm and/or the purchaser are entitled to withdraw/cancel the Rate Contract by serving an appropriate notice on each other. However, once a supply order is placed on the supplier for supply of a definite quantity in terms of the rate contract during the validity period of the rate contract, that supply order becomes a valid and binding contract.

14.2 Merits of Rate Contract

The Rate Contract system provides various benefits to both the Purchaser (i.e. user) and the Supplier and the same are indicated below:

14.2.1 Benefit to Users

a) Competitive and economical price due to aggregation of demands.
b) Saves time, efforts, man-hours and related costs involved in time consuming as well as repetitive tendering process. It thus reduces lead time for procurement.
c) Availability of quality goods with full quality assurance back-up.
d) Enables procurement as and when required and thus reduces inventory carrying cost.
e) Advantageous even to small users and those located in remote areas.
f) Provides one single point of contact to procure such items.

14.2.2 Benefit to Suppliers

i) Reduces marketing cost and efforts.
ii) Eliminates repetitive tendering and follow-up actions with multiple authorities.
iii) Provides single point contact for supplies.
iv) Aggregation of demand leads to economic production.
v) Leads to most competitive prices being offered.
vi) Lends credibility.
vii) Promotes quality discipline.

14.3 Purchase on DGS&D Rate Contracts

The Central Purchase Organization (e.g. DGS&D) is maintaining the rate contracts with the registered suppliers, for goods of standard types, which are identified as common user items and are needed on recurring basis by various Central Government Ministries and Departments. The DGS&D also placing updated all the relevant details of the rate contracts in its web site. The purchasing officer may operate those rate contracts to the maximum extent possible. In case a purchasing officer directly procures goods from the suppliers on the DGS&D rate contract, the prices to be paid for such goods shall not exceed those stipulated in the rate contract and the other salient terms and conditions of the purchase should be in line with those specified in the rate contract.

14.4 Goods for which Rate Contracts to be concluded.

a) Commonly used goods needed on recurring basis by the various Branches / Offices under the administrative control of purchasing officer like Branch Offices, Dispensaries.
b) Goods for which prices are likely to be stable or where Rate Contracts could be finalized with provision of price variations to account for fluctuation of market rates of raw materials etc.
c) Goods for which Rate Contract is convenient to operate and annual
a) Drawls are economical.

NB: i) In case of goods of low value and which are required by the users in very small quantities, rate contracts may not be concluded.

ii) Rate Contract may not be concluded for the scarce / critical/ perpetually short supply goods.

14.6 Period of Rate Contract

The period of a Rate Contract should normally be one year for stable technology products. However, in special cases, shorter or longer period may be considered. As far as possible, termination period of rate contracts should be fixed in such a way as to ensure that budgetary levies would not affect the price and thereby frustrate the contracts. Attempts should also be made to suitably stagger the period of rate contracts through out the year.

14.7 Criteria for award of Rate Contract

a) Rate Contracts shall be awarded to the firms who are registered for the goods in question and fulfill the laid down eligibility and qualification criteria including availability of ISI mark, service centers across the country etc. Suitable stipulations are to be incorporated in the tender enquiry documents to this effect. In respect of new items being brought on rate contract for the first time where there is no registered supplier (for the subject items), the requirement of registration can be relaxed

with the approval of competent authority. The award of such rate contracts will, however, be subject to the suppliers' satisfactory technical and financial capability.

b) Some of the tenderers (who are otherwise registered for the subject goods) may also be holding current rate contracts and/or held past rate contracts for the required goods. Their performance against such earlier/current rate contracts shall be critically reviewed before they are considered for award of new rate contracts. Specific performance and achievement criteria as on a selected cut-off date is to be evolved for this purpose and incorporated in the tender enquiry document. The tenderers will be asked to furnish the relevant details (along with their tenders) to enable the purchaser to judge their performance and achievement against the past/current rate contracts. These criteria are to be evolved and decided by the purchase organization during procurement planning stage for incorporation in the corresponding tender enquiry documents.

14.8 Special Conditions applicable for Rate Contract

Some conditions of rate contract differ from the usual conditions applicable for ad hoc contracts. Some such important special conditions of rate contract are given below:

i) Earnest Money Deposit (EMD) is not applicable.

ii) In the Schedule of Requirement, no quantity is mentioned; only the anticipated drawl may be mentioned without any commitment.

iii) The purchaser reserves the right to conclude more than one rate contract for the same item.

iv) The purchaser as well as the supplier may withdraw the rate contract by serving suitable notice to each other. The prescribed notice period is generally thirty days.

v) The purchaser has the option to renegotiate the price with the rate contract holders.

vi) In case of emergency, the purchaser may purchase the same item through ad hoc contract with a new supplier.

vii) Usually, the terms of delivery in rate contracts are FOR dispatching station. This is so, because the rate contracts concluded by Central Purchase Organization (e.g. DGS&D) are to take care of the users spread all over the country.

viii) Supply orders, incorporating definite quantity of goods to be supplied along with all other required conditions following the rate contract terms, are to be issued for obtaining supplies through the rate contract.

ix) The purchaser and the authorized users of the rate contract are entitled to place supply orders up to the last day of the validity of the rate contract and, though supplies against such supply orders will be

effected beyond the validity period of the rate contract, all such supplies will be guided by the terms & conditions of the rate contract.

x) The rate contract will be guided by "Fall Clause" (as described later in this chapter).

14.9 Parallel Rate Contracts

In case it is observed that a single supplier does not have enough capacity to cater to the entire demand of an item, the rate contract issuing authority may enter into more than one rate contract with different suppliers for the same item. Such rate contracts are known as Parallel Rate Contracts.

14.10 Conclusion of Rate Contracts including Parallel Rate Contracts

Techniques for conclusion of rate contract are basically identical to that of ad hoc contract (as discussed in Chapter 11 of the Manual). Identical tender documents may be utilized for conclusion of rate contracts subject to inclusion therein the special terms & conditions as applicable for rate contracts.

In the normal course, the rate contract is to be awarded to the lowest responsive tenderer (L1). However, depending on the anticipated demand of the item, location of the users, capacity of the responsive bidders, reasonableness of the prices quoted by the responsive bidders, etc. it may become necessary to award parallel rate contracts also. For this purpose, a reasonable price band above the L1's price is to be decided and parallel rate contracts awarded to the responsive tenderers falling within that price band. Efforts should be made to conclude parallel rate contracts with suppliers located in different parts of the country. For the sake of transparency and to avoid any criticism, all such rate contracts are to be issued simultaneously.

14.11 Price Negotiation/Counter-Offer Price Negotiation with the tenderers should be severely discouraged.

However, in case the price quoted by the lowest responsive tenderer (L1) is not reasonable and acceptable, the price may be negotiated with L1 only and, if it reduces the price to the desired level, rate contract may be concluded with L1. To start with, the rate contract may be awarded to L1 tenderer. Then the price of L1 is to be counter offered to the higher quoting responsive tenderers under intimation to L1 asking them to send their revised tenders in sealed covers to be opened in public at a specified place, date and time (as per the standard procedure). L1 may be specifically informed that it may, if it so desires, reduce its price and send its revised tender accordingly as above. The tenderers who accept the counter offer rate or rate lower than that are to be awarded parallel rate contracts. If L1 lowers its rate in its revised offer, same may also be accepted with effect from that date and its rate contract amended accordingly.

There may also be a situation where parallel rate contracts are necessary, but even the price of the lowest responsive tenderer (L1) is not reasonable. In that case, price negotiation may be conducted with L1 in the first instance. If L1 agrees to bring down the price to the desired level, rate contract may be concluded with it and that price counter offered to other responsive tenderers under intimation to L1 for further action in identical manner as indicated in the above paragraph. If, however, L1 does not agree to reduce its price in the first instance itself, then the price, which has been decided as reasonable may be counter offered to all the responsive tenderers (including L1) for further action on above lines.

14.13 Cartel Formation / Pool Rates

Sometimes a group of tenderers quote identical rates against a rate contract tender. Such Pool/Cartel formation is against the basic principle of competitive bidding and defeats the very purpose of open and competitive tendering system. Such practices should be severely discouraged with strong measures. Suitable administrative actions like rejecting the offers, reporting the matter to Registrar of Companies, MRTP Commission, National Small
Industries Corporation etc. should be initiated against such firms, on case to case basis, as decided by the competent authority. The purchasing officer may also bring such unhealthy practice to the notice of the concerned trade associations like FICCI, ASOCHAM, NSIC, etc. requesting them, inter alia, to take suitable strong actions against such firms. The purchasing officer may also encourage new firms to get themselves registered for the subject goods to break the monopolistic attitude of the firms forming cartel.

14.14 Fall Clause

Fall clause is a price safety mechanism in rate contracts. The fall clause provides that if the rate contract holder reduces its price or sells or even offers to sell the rate contracted goods following conditions of sale similar to those of the rate contract, at a price lower than the rate contract price, to any person or organization during the currency of the rate contract, the rate contract price will be automatically reduced with effect from that date for all the subsequent supplies under the rate contract and the rate contract amended accordingly.

Other parallel rate contract holders, if any, are also to be given opportunity to reduce their price as well, by notifying the reduced price to them and giving them 15 (fifteen) days time to intimate their revised prices, if they so desire, in sealed cover to be opened in public on the specified date and time and further action taken as per standard practice.

On many occasions, the parallel rate contract holders attempt to grab more orders by unethical means by announcing reduction of their price (after getting the rate contract) under the guise of Fall Clause. This situation is also to be dealt with in similar manner as mentioned in the preceding paragraph.

It is however, very much necessary that the purchase organizations keep special watch on the performance of such rate contract holders who reduce their prices on one pretext or other. If their performances are not upto the mark, appropriately severe action should be taken against them including deregistering them, suspending business deals with them, etc.

14.15 Security Deposits

Depending on the anticipated overall drawl against a rate contract and, also, anticipated number of parallel rate contracts to be issued for an item, the purchasing officer shall consider obtaining Security Deposits of reasonable amount from the rate contract holders. A suitable clause to this effect is to be incorporated in the tender enquiry documents. Security Deposit shall, however, not be demanded in the supply orders issued against rate contracts.

14.16 Renewal of Rate Contracts

It should be ensured that new rate contracts are made operative right after the expiry of the existing rate contracts without any gap for all rate contracted items. In case, however, it is not possible to conclude new rate contracts due to some special reasons, timely steps are to be taken to extend the existing rate contracts with same terms, conditions etc. for a suitable period, with the consent of the rate contract holders. Rate contracts of the firms, who do not agree to such extension, are to be left out. Period of such extension should generally not be more than three months. Also, while extending the existing rate contracts, it shall be ensured that the price trend is not lower.

14.17 Placement of Supply Orders

Supplies are to be obtained against a rate contract by placing on the rate contracted firm supply order containing the quantity of the goods to be supplied and incorporating the prices and other relevant terms and conditions of the rate contract. The officials placing such supply orders should be duly competent and authorized to do so.

A supply order should generally contain the following important details:

(a) Rate Contract No. and date.

(b) Quantity. (Where there is more than one consignee, the quantity to be dispatched to each consignee is to be indicated).

(c) Price.

(d) Date of Delivery by which supplies are required.

(In the supply order, a definite delivery date based on the delivery period stipulated in the rate contract is to be provided).

(e) Full address of the purchase organization along with telephone. No., Fax No. and E. mail address.

(f) Complete and correct designation and full postal address of the consignee(s)/goods receiving officer(s) along with telephone No., Fax No. and E-mail address.
(g) Nearest Railway Siding (NRS) of the consignee(s).
(h) Dispatch instructions
(i) Designation and address of the inspecting officer.
(j) Designation and address of the paying authority to whom the bills are to be raised by the supplier

Copies of supply order are to be endorsed to all concerned.

CHAPTER – 15

MISCELLANEOUS

15.1 Buy Back Offer

When it is decided with the approval of the competent authority to replace some existing old goods with their newer and better versions/substitutes, the department may trade the existing old goods while purchasing the new ones. For this purpose, suitable clauses are to be incorporated in the tender enquiry document so that the interested tenderers formulate and submit their tenders accordingly. Provision should also be kept in the tender documents to permit the interested tenderers to inspect the old goods to be traded through this transaction.

Appropriate provision should also be kept in the tender document allowing the purchase organization to reserve its right to trade or not to trade the old goods while purchasing the new ones and the tenderers are to be asked to frame their quotations accordingly covering both the options.

Depending on the value and condition of the old goods to be traded, the time frame for as well as the mode of handing them over to the successful tenderer should be decided and relevant details in this regard suitably incorporated in the tender document.

15.2 Maintenance Contract

15.2.1 Some goods, especially sophisticated equipment and machinery need proper maintenance for trouble free service. For this purpose, the purchase organization may enter into maintenance contract. It must however be kept in mind that maintenance contract is to start after the expiry of the warranty period, during which period the goods are to be maintained free of cost by the supplier.

15.2.2 Maintenance contract may be entered into either with the manufacturer/supplier of the goods or with a competent and eligible firm, not necessarily the manufacturer/supplier of the goods in question. The purchase organization should decide this aspect on case to case basis on merit.

If the maintenance contract is to be entered into with the supplier of the goods, then suitable clauses for this purpose are to be incorporated in the tender enquiry document itself and while evaluating the offers, the cost component towards maintenance of the goods are also to be added in the evaluated tender value on overall basis to decide the inter se ranking of the responsive tenderers.

Equipment with a lower quoted price may carry a higher maintenance liability. Therefore, total cost on purchase and maintenance of the equipment over its projected lifecycle should be assessed to consider its suitability for purchase.

However, if the maintenance contract is to be entered into with a competent and eligible supplier separately, then a separate tender enquiry is to be floated for this purpose and tenders evaluated and ranked accordingly for placement of maintenance contract. Here, the supplier of the goods may also quote and its quotation, if received, is to be considered along with other quotations received.

While evaluating the tenderers for maintenance of goods covering a longer period (say, more than one year), the quoted prices pertaining to maintenance in future years are to be discounted to the net present value
(NPV) as appropriate for comparing the tenders on equitable basis and deciding the lowest evaluated responsive tender.

15.2.3 The details of the services required for maintenance of the goods, the required period of maintenance and other relevant terms & conditions including payment terms are to be incorporated in the tender enquiry document. The terms of payment for the maintenance service will depend on the nature of the goods to be maintained as well as the nature of the services desired. Generally, payment for maintenance is made on half-yearly or quarterly basis.

15.2.4 A suitable provision should be incorporated in the tender enquiry document and in the resultant maintenance contract indicating that the prices charged by the maintenance contractor should not exceed the prevailing rates charged by it from others for similar services. While claiming payment, the contractor is also to give a certificate to this effect in its bill.

15.2.5 If the goods to be maintained are sophisticated and costly, the tender enquiry document should also have a provision for obtaining performance security. The amount of Security Deposit will depend on the nature of the goods, period of maintenance etc. It generally varies from 2.5 % to 5% of the value of the equipment to be maintained.

15.2.6 Sometimes, the maintenance contractor may have to take the goods or some components of the goods to its factory for repair etc. On such occasions, before handing over the goods or components, suitable bank guarantee is to be obtained from the firm to safeguard purchaser’s interest.

15.2.7 Sometimes, during the tenure of a maintenance contract, especially with a longer tenure, it may become necessary for the purchase organization to withdraw the maintenance contract due to some unforeseen reasons. To take care of the same, there should be a suitable provision in the tender document and in the resultant contract. A model clause to this effect is provided below:

"The purchaser reserves its right to terminate the maintenance contract at any time without assigning any reason. The contractor will not be entitled to claim any compensation against such termination. However, while terminating the contract, if any payment is due to the contractor for maintenance services already performed in terms of the contract, the same would be paid to it as per the contract terms".

Depending on the cost and nature of the goods to be maintained, suitable notice period for such cancellation to come into effect is to be provided in the documents.

15.3 Turnkey Contract

A turnkey contract is a mix of goods contract and works contract. Generally, in the tender enquiry documents for a turnkey contract, the purchase organization specifies the performance and output required from the plant proposed to be set up and broadly outlines the various parameters it visualizes for the desired plant. The inputs and other facilities, which the purchase organization will provide to the contractor, are also indicated in the tender enquiry document. The contractor is to design the plant and quote accordingly. The responsibility of the contractor will include supplying the required goods, machinery, equipment etc. needed for the plant; assembling, installing and erecting the same at site as needed; commissioning the plant to meet the required output etc., as specified in the tender enquiry documents.

15.4 Disposal of Surplus Goods

With the passage of time, many of the goods purchased by the Departments become unserviceable or obsolete. Such goods are classified as surplus goods. The controlling officer should dispose off such surplus goods at the earliest, to avoid unnecessary inventory carrying cost, decrease in resale price of those goods etc.

Detailed comprehensive instructions for disposal of surplus goods are available under Rules 196 to 202 of General Financial Rules, 2005.

ANNEXURES

ANNEXURE – A
(Ref. para 6.19 of Chapter 6)

MODEL FORMAT FOR HANDING OVER OPENED TENDERS
TO PURCHASE OFFICER

Regular Tenders which are to be opened on(date & time)…… against Tender Enquiry no. ……

Total no. of regular tenders taken out from the tender box to be opened as mentioned above _____ (in figures)
…… (in words)

Signatures

(Name & Designation)	(Name & Designation)
Date	Date
Time	Time

Received total (in figures/words) regular tender as above.

Signatures

(Name & Designation)	(Name & Designation)
Date	Date
Time	Time

ANNEXURE – B

(Ref. Para 7.1 of Chapter 7)

MODEL BANK GUARANTEE FORMAT FOR FURNISHING EMD

Whereas…… (hereinafter called the "tenderer") has submitted their offer dated…… for the supply of …… (hereinafter called the "tender") against the purchaser's tender enquiry No. ……. KNOW ALL MEN by these presents that WE …… of ……having our registered office at ……. are bound unto ……. (hereinafter called the "Purchaser) in the sum of …… for which payment will and truly to be made to the said Purchaser, the Bank binds itself, its successors and assigns by these presents. Sealed with the Common Seal of the said Bank this…… day of …….20……

THE CONDITIONS OF THIS OBLIGATION ARE:

(1) If the tenderer withdraws or amends, impairs or derogates from the tender in any respect within the period of validity of this tender.
(2) If the tenderer having been notified of the acceptance of his tender by the Purchaser during the period of its validity:-
    (a) If the tenderer fails to furnish the Security Deposit for the due performance of the contract.
    (b) Fails or refuses to accept/execute the contract.

WE undertake to pay the Purchaser up to the above amount upon receipt of its first written demand, without the Purchaser having to substantiate its demand, provided that in its demand the Purchaser will note that the amount claimed by it is due to it owing to the occurrence of one or both the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force upto and including 45 days after the period of tender validity and any demand in respect thereof should reach the Bank not later than the above date.

…….

(Signature of the authorized officer of the Bank)

……

……

Name and designation of the officer

……

Seal, name & address of the Bank and address of the Branch

ANNEXURE – C

(Ref. Para 7.4 of Chapter 7)

MODEL BANK GUARANTEE FORMAT FOR PERFORMANCE SECURITY

To

The President of India

WHEREAS …… (name and address of the supplier) (hereinafter called "the supplier") has undertaken, in pursuance of contract no……. dated ……. to supply (description of goods and services) (herein after called "the contract").

AND WHEREAS it has been stipulated by you in the said contract that the supplier shall furnish you with a bank guarantee by a scheduled commercial recognized by you for the sum specified therein as security for compliance with its obligations in accordance with the contract;

AND WHEREAS we have agreed to give the supplier such a bank guarantee;

NOW THEREFORE we hereby affirm that we are guarantors and responsible to you, on behalf of the supplier, up to a total of …… …… (amount of the guarantee in words and figures), and we undertake to pay you, upon your first written demand declaring the supplier to be in default under the contract and without cavil or argument, any sum or sums within the limits of (amount of guarantee) as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the supplier before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the contract to be performed thereunder or of any of the contract documents which may be made between you and the supplier shall in any way release us from any liability under this guarantee and we hereby waive notice of any such change, addition or modification.

This guarantee shall be valid until the ….. day of ……, 20……

…….

(Signature of the authorized officer of the Bank)

…….

Name and designation of the officer

…….

Seal, name & address of the Bank and address of the Branch

ANNEXURE – D

(Ref. Para 8.5 of Chapter 8)

Government of India

Ministry of Surface Transport

No. SC-11011/1/94-ASO.II/Vol.III New Delhi, the 27th February, 1996

OFFICE MEMORANDUM

Sub: Ocean transportation of cargo under the control of Government/Public Sector Undertakings-Review of the Policy regarding.

The undersigned is directed to say that as per the existing policy of Government of India all import contracts are to be finalized on FOB (Free on Board) / FAS (Free Alongside Ship) basis and those for exports on C&F (Cost and Freight)/CIF (Cost, Insurance, Freight) basis in respect of Government owned/controlled cargoes on behalf of Central Government Departments/State Government Departments and Public Sector Undertakings under them and in case of any departure therefrom, prior permission is required to be obtained from the chartering Wing of the Ministry of Surface Transport on a case to case basis. The shipping arrangements are centralized in the Ministry of Surface Transport. These instructions about FOB/FAS purchases and C&F/CIF sales and entering into contracts where the elements of foreign exchange expenditure is minimum already stand incorporated in the General Financial Rules of the Government.

2. Based on the difficulties/problems, as intimated by certain Government Departments/Public Sector Undertakings in the changed context of economic liberalization, the thrust on performance improvement and competitiveness of Public Sector Undertakings, decentralization of certain cargoes, Government has undertaken a thorough review of the above policy at various levels and it has now been decided by the Government that :-

i) Government policy for import contracts to be finalized on FOB/FAS basis and for exports on CIF basis in respect of Government owned/controlled cargoes on behalf of Central Government Departments / State Government Departments and Public Sector Undertakings under them and centralized shipping arrangements through the Ministry of Surface Transport (Chartering Wing) in association with the concerned user Ministry/Department/PSU may continue.

ii) Prior permission is required to be obtained from Ministry of Surface Transport on a case to case basis in case of any departure from the above policy. However, Ministry of Surface Transport shall ensure disposal of such requests within four working days on receipt of the complete information/request from the concerned Ministry/PSU.

iii) Ministry of Surface Transport, Chartering Wing to ensure full utilization of suitable Indian vessels in case they are able to meet the indentor's requirements at competitive rates and are able to maintain the schedule.

iv) In case of import of bulk quantities like fertilizers, coal, food grains etc. where freight element is substantial, a representative from Ministry of Surface Transport may be invited to participate in the discussions for advising on the shipping aspects of import/export contracts.

v) Ministry of Surface Transport should make all out efforts to finalize vessels, Indian or foreign, at the most competitive rates and before fixing the vessels, prior approval of the indenting department/PSU should be obtained.

vi) In order to make imports and exports cost-effective and for judicious use of foreign exchange, Ministries/Departments should ensure imports on FOB/FAS and exports on CIF basis failing which necessary No Objection Certificate (NOC) should be obtained from Ministry of Surface Transport (Chartering Wing) while applying for release of necessary foreign exchange for the purpose of chartering foreign vessels and for making freight payment in foreign currency.

vii) The tendering system to be followed by Ministries / Departments / PSUs will be standardized. The Cabinet Secretariat will initiate appropriate action in this regard.

3. It is requested that above decision taken by the Government of India may kindly be brought to the notice of all the Public Sector Undertakings/Projects/Autonomous Bodies/Purchasing & Selling Organizations under the administrative control of Ministries and Departments concerned and they may be advised to follow the prescribed procedure for arranging shipment of their cargoes through Chartering Wing (popularly known by its Cable Address: "TRANSCHART" in the shipping circle, the world over) of this Ministry and incorporating the prescribed Shipping Clauses in the purchase orders/contracts. They may also be instructed to send each of the contracts in respect of both exports as well as imports, along with cargo particulars like weight, volume, loading port, discharging port, loading rate, discharging rate, period of shipment, parcel size and any other specific condition relating to shipment of cargoes etc. to this Ministry as soon as the same are finalized, for taking further necessary action with regard to the shipping arrangements.

4. A copy of the instructions issued may please also be endorsed to this Ministry.

Sd/-
(T.V. SHANBHAG)
Chief Controller of Chartering

ANNEXURE – E
(Ref. Para 8.5 of Chapter 8)
Government of India
Ministry of Surface Transport
(Chartering Wing)

No. SC-18013/1/98-ASO.II New Delhi, the 11th February, 1998

OFFICE MEMORANDUM

Sub: Govt. Departments / Public Sector Projects/Undertakings
Contracting of FOB/FAS import and CIF exports – shipping arrangement through the Ministry of Surface Transport (Chartering Wing) from various sectors-procedure regarding.

The undersigned is directed to say that as per general policy of Government of India, all import contracts have to be concluded on FOB/FAS and those for exports on CIF basis in respect of Government owned and controlled cargoes and shipping arrangements are centralized with Chartering Wing of Ministry of Surface Transport. For any departure from the above policy, prior approval of this Ministry is required. The policy provides for grant of waivers in suitable cases where it is found it is not possible to follow the said policy.

2. The shipping arrangements are being made by Chartering Wing, Ministry of Surface by using Indian flag vessels and if no suitable Indian vessels are available in the required position, foreign flag vessels are chartered. Shipping arrangements in respect of Government general liner cargoes are being made by this Ministry through respective Government of India's freight forwarders like M/s. Schenker International, Humburg, M/s. OPT, USA etc. Shipment of general liner cargo is not restricted to Indian flag vessels and it is shipped by any vessel belonging to Conference member lines which are operating from various sectors.

3. The Government of India has an agreement with India-Pakistan-Bangladesh-Ceylone and Burma Freight Conference (INDPAKCON) FMC Agreement No.7690) covering the trade from US Atlantic and Gulf ports to India through the vessels belonging to the Member lines of this Conference only and as per the agreement all Government of India/State Government Departments/PSUs/Projects cargoes are to be shipped only through the vessels of Member Lines belonging to this Conference.

4. Similarly, the Government of India has another agreement with India-Pakistan Bangladesh Conference (IPBC) covering the trade from ports in the

United Kingdom including Northern Ireland, North Continent of Europe (Germany, Holland, Belgium, Norway, Sweden, Denmark, Finland) and from parts on the continental sea boards of the Mediterrean (i.e. French and Western Italian Port) to ports in India. It is obligatory on the part of Government to ship all Government liner cargoes through the vessels belonging to this Conference.

5. In order to ensure smooth and timely shipment of governmental general liner cargoes, the Government of India, Ministry of Surface Transport has appointed freight forwarding agents from various areas as mentioned below:

1. M/s . Schenker International Deutschland GmbH
   Postfach 11 03 13
   20403 Hamburg
   Dei den Muhren 5
   20457 Hamburg.
   Tel : (040) 36135-537
   Fax : (040) 36135-509
   Tlx : 21700 sh d
   (In respect of government general liner cargoes emanating from UK/North Continent as indicated in para (2) above).
2. M/s OPT Overseas Project Transport Inc.,
   (A Thyssen Haniel Logistic Co.)
   46, Sellers St., Kearny, N.J. 07032, USA
   Tel : (201) 998-771, TLX : 673-3586, FAX : (201) 998-7833
   (In respect of cargoes emanating from US Gulf, Canada & South America)
3. Embassy of India,
   2-11, Kudan Minami 2-chome
   Chiyoda-ku
   TOKYO 102
   TLX : 2324886, INDEMB J
   Phone : 03 (3262) 2391
   FAX : 03 (3234) 4866
   (In respect of government general liner cargoes emanating from Japan)
4. Embassy of India
   San-2-1
   Bokwang-Doong, Yongsan-ku
   (Behand Bewling Centre)
   Seoul, South Korea (CABLE IND EMBASSY, SEOUL, SOUTH KOREA)
   Telex : K211641, Tele. 793-4142, 704159
   (In respect of cargoes emanating from South Korea)
5. Shipping Corporation of India Ltd.
   Shipping House
   245, Madame Cama Road
   Mumbai
   Tlx : 011-2214/2371 SCI IN)

Phone : 2026666/2026785

(In respect of cargoes being shipped from all other areas which are not covered from (1) to (4) above).

6. In order to ensure compliance with the transportation agreement with INDPAKCON, IPBC, M/s Opt, USA and M/s Schenker International, Hamburg, all the Public Sector Undertakings, Projects are requested to prescribe in their purchase contracts that all booking must be made through Government of India's respective freight forwarders as indicated above and the same may also be incorporated in the letter of credit to ensure shipping arrangements through the vessels of Members of the Conference and appointed freight forwarders.

7. It has been brought to the notice of this Ministry that some of the Public Sector Undertakings are not following the above policy and shipping arrangements are made through other than GoI appointed freight forwarders. It has been further brought to the notice of this Ministry that some of he Indian freight forwarding companies are claiming to have been appointed as freight forwarders by M/o Surface Transport which is not correct. Therefore, it is advised that Government of India and State Government Departments and Public Sector Undertakings should ensure (as indicated above) only and should not entertain any other freight forwarder in this regard.

8. It is requested that the above may kindly be brought to the notice of all the Public Sector Undertakings/projects/purchase and selling organisations under the administrative control of the Ministries/Departments concerned and they may be advised to follow the prescribed procedure for arranging shipment of their cargoes through Chartering wing (Transchart) of this Ministry and incorporate the prescribed shipping clauses in the import/export contracts.

Sd/-
(T.V. SHANBHAG)
Chief Controller of Chartering

To

1. All Ministries/Departments ……..2 copies
2. The Chief Secretary to all the State Governments

ANNEXURE – F

(Ref. Para 8.15 of Chapter 8)

MODEL AMENDMENT LETTER FOR EXTENSION OF DELIVERY PERIOD FOR FOB/FAS/CIF CONTRACT

Registered Acknowledgement Due
Address of the purchaser

To
M/s ……..
……
Sub: This office contract no…….. dated ……. placed on you for supply of ……
Ref: Your letter no…… dated …….
Dear Sirs,

You have failed to deliver the goods / entire quantity of the goods within the contract deliver period/delivery period as last extended up to _____. In your above referred letter, you have asked for extension/ further extension of time for delivery. In view of the circumstances stated in your above referred letter, the time of delivery is extended from _____ (last delivery period) to _____ (presently agreed delivery period).

2. Please note that in terms of clause…….. of the contract, a sum equivalent to ……% (…… per cent) of the delivered price of the delayed goods for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally re-fixed delivery date (as & if applicable) viz. zzz will be recovered from you as liquidated damages.

3. The above extension of delivery date will also be subject to the further condition that, notwithstanding any stipulation in the contract for increase in price on any ground, no such increase, whatsoever, which takes place after zzz shall be admissible on such of the said goods as are delivered after the said date. But, nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on any ground (including the impact of the price variation clause, if

incorporated in the contract), which takes place after the expiry of the above mentioned date namely zzz.

4. You are also required to extend the validity period of the performance guarantee for the subject contract from …… (present validity date) to ……. (required extended date) within fifteen days of issue of this amendment letter.

5. Please intimate your unconditional acceptance of this amendment letter within ten days of the issue of this letter failing which the contract will be cancelled at your risk and expense without any further reference to you.

All other terms & conditions of the contract remain unaltered.

Yours faithfully,

(……)
for and on behalf of……..

Copy to :
……..
……..
……..
(All concerned)
zzz Original delivery date or the last unconditionally re-fixed delivery date (as the case may be)
NB : The entries which are not applicable for the case under consideration are to be deleted.

ANNEXURE – G

(Ref. Para 8.15 of Chapter 8)

MODEL AMENDMENT LETTER FOR EXTENSION OF DELIVERY PERIOD FOR CONTRACT OTHER THAN FOB/FAS/CIF CONTRACT

Registered Acknowledgement Due

Address of the purchase office

To

M/s ……..

……

Sub: This office contract no…….. dated ……. Placed on you for supply of ……..

Ref : Your letter no…… dated …….

Dear Sirs,

You have failed to deliver the goods / entire quantity of the goods within the contract deliver period/delivery period as last extended up to _____. In your above referred letter, you have asked for extension/ further extension of time for delivery. In view of the circumstances stated in your above referred letter, the time of delivery is extended from _____ (last delivery period) to _____ (presently agreed delivery period).

2. Please note that in terms of clause…….. of the contract, a sum equivalent to ……% (…… per cent) of the delivered price of the delayed goods for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally re-fixed delivery date (as & if applicable) viz. zzz will be recovered from you as liquidated damages.

3. The above extension of delivery date will also be subject to the following further conditions:-

i) That no increase in price on account of any statutory increase in or fresh imposition of custom duty, excise duty, sales tax or on account of any other tax or duty leviable in respect of the goods specified in

the said contract, which take place after zzz shall be admissible on such of the said goods as delivered after the said date.

ii) That notwithstanding any stipulation in the contract for increase in price on any ground, no such increase whatsoever, which takes place after zzz shall be admissible on such of the said goods as are delivered after the said date.

iii) But nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of custom duty, excise duty, sales tax or on account of any other tax or duty or any other ground whatsoever, including the impact of price variation clause (if incorporated in the contract), which takes place after the expiry of the above mentioned date namely zzz.

4. You are also required to extent the validity period of the performance guarantee for the subject contract from ……..(existing date) to ……..(required extended date) within fifteen days of issue of this letter.

5. Please intimate your unconditional acceptance of this amendment letter, to reach this office within ten days of issue of this letter, failing which the contract will be cancelled at your risk and expense without any further reference to you. All other terms & conditions of the contract remain unaltered.

Yours faithfully,

(……)
for and on behalf of……..

Copy to :
……..
……..
……..
(All concerned)

zzz Original delivery date or the last unconditionally re-fixed delivery date (as the case may be)

NB : The entries which are not applicable for the case under consideration are to be deleted.

ANNEXURE – H

(Ref. Para 8.16 of Chapter 8)

MODEL FORMAT FOR PERFORMANCE NOTICE

Registered Acknowledgement Due

To
M/s _____
_____
_____

Sub: Contract No…… dated …….. placed on you for supply of ……

Dear Sirs,

Your attention is invited to the acceptance of tender cited above, according to which suppliers ought to have been completed by you on or before _____. In spite of the fact that the time of delivery of the goods stipulated in the contract is deemed to be of the essence of the contract, it appears that xx are still outstanding even though the date of delivery has expired.

2. Although not bound to do so, the delivery date is hereby extended to _____ and you are requested to note that in the event of your failure to deliver the goods within the delivery period as hereby extended, the contract shall be cancelled for the outstanding goods at your risk and cost.

3. …….

4. …….

5. …….

6. …….

…….

…….

Yours faithfully,

(----------)

for ……

xx Details of outstanding goods.